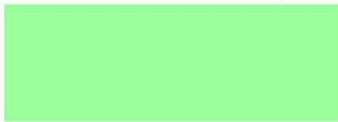




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **SEP 18 2013**

OFFICE: MIAMI, FLORIDA

File:

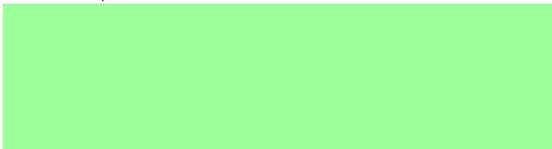
IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Miami, Florida denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The field office director indicated that the applicant is a native and citizen of Uzbekistan who is applying for a waiver of grounds of inadmissibility under section 212(a) of the Immigration and Nationality Act (the Act). The record indicates that the applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The field office director concluded that because there is no pending Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), over which the United States Citizenship and Immigration Services (USCIS) has jurisdiction, USCIS likewise lacks jurisdiction over the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), which was denied accordingly. *See Decision of the Field Office Director*, dated April 10, 2012.

On appeal, counsel contends that when the applicant's Form I-601 was filed in February 2012, the applicant did have a Form I-485 open and pending with USCIS. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received April 23, 2012. The AAO finds counsel's assertion unpersuasive.

The record shows that the applicant is currently under a final order of removal and has been in removal proceedings since at least since 2005. On December 7, 2005, an immigration judge denied the applicant's application for asylum and ordered her deported, ineligible for any forms of relief based upon the filing of a frivolous asylum application under section 208 of the Act and ineligible for adjustment of status in the United States because she is barred by the filing of a frivolous asylum application. The applicant appealed to the Board of Immigration Appeals (BIA), which dismissed the appeal on September 13, 2007. The applicant subsequently filed a motion to reconsider with the BIA, asserting that she be found stateless and the proceedings be remanded to allow her to apply for adjustment of status. On February 14, 2008, the BIA denied the motion, noting that the applicant is ineligible for such relief based on her frivolous filing. On March 12, 2008, the applicant filed a petition for review with the Seventh Circuit Court of Appeals, which it denied on November 3, 2008 and closed the case. Despite the applicant being under a final order of removal in which she was additionally ordered ineligible to apply for adjustment of status, the applicant filed a Form I-485 with USCIS on January 28, 2009. On April 29, 2009, the applicant filed a Form I-601 to which she attached a copy of the immigration judge's December 7, 2005 deportation order. On August 6, 2009, the Miami field office director issued a Decision to Administratively Close Application to Adjust Status. Therein, the director determined that because the applicant is in deportation or removal proceedings, pursuant 8 C.F.R. § 245(a)(1) her adjustment application must be made and considered only in those proceedings. The applicant's Form I-601 was administratively closed on September 8, 2010. On February 29, 2012, the applicant filed a new Form I-601 with USCIS which was denied by the field office director for the same reason on April 10, 2012.

Pursuant to 8 C.F.R. § 245.2(a)(1), USCIS has jurisdiction to adjudicate an application for adjustment of status, unless the immigration judge has jurisdiction to adjudicate the application under 8 C.F.R. § 1245.2(a)(1). 8 C.F.R. § 1245.2(a)(1) provides that in the case of any alien who has been placed in deportation proceedings or in removal proceedings (other than as an arriving alien), the immigration judge hearing the proceeding has exclusive jurisdiction to adjudicate any application for adjustment of status the alien may file.

The field office director administratively closed the applicant's Form I-485 application which had been improperly filed with USCIS while the applicant was in removal proceedings. Therefore, despite counsel's assertion to the contrary, there was no pending Form I-485 before USCIS when the applicant filed a Form I-601 in February 2012. The viability of the Form I-601, Application for Waiver of Grounds of Inadmissibility, is dependent on a pending or approved Form I-485, Application to Adjust Status. As the applicant has been found ineligible to adjust status on a basis other than inadmissibility, no purpose would be served in adjudicating the Form I-601. The appeal of the denial of the waiver must therefore be dismissed.

ORDER: The appeal is dismissed.