



**U.S. Department of Justice**

**Executive Office for Immigration Review**

*Board of Immigration Appeals  
Office of the Clerk*

*5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041*

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**DHS/ICE Office of Chief Counsel - DET  
333 Mt. Elliott St., Rm. 204  
Detroit, MI 48207**

**Name: RAIS, MUHAMMAD SALMAN**

**A079-692-636**

**Date of this notice: 6/20/2012**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Holmes, David B.

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Falls Church, Virginia 22041

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File: A079 692 636 - Detroit, MI

Date:

JUN 20 2012

In re: MUHAMMAD SALMAN RAIS a.k.a. Muahmmad Salman Rais

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Ronald Kaplovitz, Esquire

ON BEHALF OF DHS: Tara L. Harris  
Assistant Chief Counsel

ORDER:

On March 9, 2012, the respondent, who is a native and citizen of Pakistan, filed a timely motion to reopen, following the Board's February 13, 2012, final order. The Department of Homeland Security (the "DHS") opposes the motion, which will be denied.

We determined on February 13, 2012, that the Immigration Judge properly concluded that she lacked jurisdiction to adjudicate the respondent's adjustment of status application, because he is an arriving alien and does not fall under the exception contained at 8 C.F.R. §§ 245.2(a)(1) and 1245.2(a)(1)(ii). Rather, jurisdiction over the respondent's application is with the DHS, United States Citizenship and Immigration Services (USCIS).

The respondent presents evidence that he has sought adjustment of status with the USCIS, since he is an arriving alien, but that on February 24, 2012, his adjustment application was denied on the basis that there is an outstanding order of removal.

The motion states that the respondent intends to file a motion to reconsider with the USCIS (Respondent's Mot. at 4; DHS Opp at 2). The USCIS decision appears to be in error, as the DHS essentially acknowledges in response to the motion (DHS Opp. at 1). The respondent is an arriving alien, and adjudication of the adjustment application may proceed regardless of the outstanding removal order. 8 C.F.R. § 245.2(a)(1); *see also Matter of Yauri*, 25 I&N Dec. 103, 107 (BIA 2009).

We encourage the respondent to proceed with a motion to reconsider before the USCIS, as we have no authority to review the USCIS decision. We are not persuaded that reopening of these proceedings is necessary at this juncture. The respondent has not indicated that the DHS is currently seeking enforcement of the removal order. However, if the need for a stay arises while his request for reconsideration is pending, he may seek such a stay from the DHS. 8 C.F.R. §§ 241.6(a), 1241.6(a). Accordingly, given the record presently before us, the pending motion is denied.

  
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FOR THE BOARD