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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



PUBLIC COPY

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[Redacted]

Date: **DEC 14 2011**

Office: HARLINGEN, TX

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who procured a nonimmigrant visa in April 2000 by misrepresenting her marital status. Specifically, the applicant claimed to be single when in fact she was married to a lawful permanent resident since 1995. The field office director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having procured a nonimmigrant visa and subsequent entry to the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, she is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her lawful permanent resident spouse.

The field office director determined that the applicant had failed to establish that she was in lawful immigration status pursuant to section 245(a) of the Act on the date of the submission of the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485). The field office director further noted that the applicant had failed to establish eligibility to adjust status under section 245(i) of the Act as she had not demonstrated that she was physically present in the United States on December 21, 2000. The field office director concluded that the applicant was statutorily ineligible for adjustment of status and denied the applicant's Form I-485 accordingly. *Decision of the Field Office Director to Deny the Applicant's Form I-485*, dated August 26, 2009.

In a separate decision, the field office director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 27, 2009.

On appeal, counsel for the applicant submits a brief and supporting documentation in support of extreme hardship to the applicant's lawful permanent resident spouse.

As noted above, the field office director concluded that it had not been established that the applicant was in lawful immigration status pursuant to section 245(a) of the Act on the date of the Form I-485 submission. The field office director further noted that the applicant had failed to establish eligibility to adjust status under section 245(i) of the Act. In immigration proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The field office director concluded that the applicant was consequently not eligible to adjust status.

In the present case, section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), would only be applicable, thereby requiring the filing of the Form I-601 by the applicant, if the field office director

had found that the applicant was in lawful immigration status at the time of the Form I-485 filing or alternatively, that she met the requirements of section 245(i) of the Act. Any evidence concerning whether the applicant was in lawful immigration status when she filed the Form I-485 and/or that the applicant is eligible to adjust her status under section 245(i) of the Act must be submitted to the field office director in the form of a motion to reopen or reconsider the denial of Form I-485, pursuant to the laws and regulations in place.

As the field office director determined that the applicant is statutorily ineligible to apply for adjustment of status and denied the applicant's Form I-485, there is no underlying application for admission on which to base an application for waiver of grounds of inadmissibility. As there is no underlying application for admission pending at this time, the appeal will be dismissed.

ORDER: The appeal is dismissed.