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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**

#5



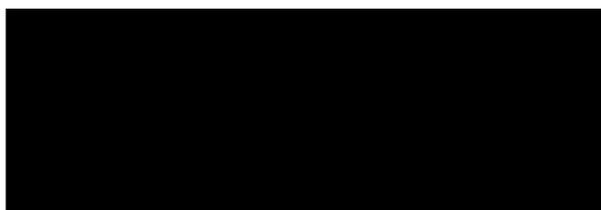
FILE: [REDACTED] Office: PHILADELPHIA

Date: FEB 22 2011

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:



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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant, a native and citizen of Nigeria, filed the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) in April 2007, contending inadmissibility to the United States under section 274(c) of the Immigration and Nationality Act (the Act).¹

The field office director determined that the applicant had failed to establish eligibility to apply for adjustment of status because she had not established that she was either inspected and admitted or paroled, as required by section 245(a) of the Act. The field office director further noted that the applicant was not eligible to adjust status under section 245(i) of the Act. The field office director concluded that the applicant was statutorily ineligible for adjustment of status and denied the applicant's Form I-485, Application to Resister Permanent Residence or Adjust Status, accordingly. *Decision of the Field Office Director to Deny the Applicant's Form I-485*, dated October 30, 2008.

In a separate decision, the field office director concluded that as the applicant was not eligible to adjust status, the Form I-601 application must be denied as it lacked merit. *Decision of the Field Office Director to Deny the Applicant's Form I-601*, dated October 30, 2008.

On appeal, counsel for the applicant submits documentation in support of the applicant's assertion that she was inspected and admitted to the United States in June 2003 after presenting a passport issued to her cousin. *See Form I-290B*, dated November 24, 2008 and *Affidavits*.

As noted above, the field office director concluded that it had not been established that the applicant was inspected or admitted to the United States using a fraudulent passport. 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 further noted that section 245(i) of the Act does not apply to the applicant to provide relief for not having been inspected and admitted or paroled and concluded that the applicant was consequently not eligible to adjust status.

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 had been inspected and admitted to the United States by fraud or willful misrepresentation. The field office director determined that the applicant had failed to establish that she was inspected

¹ The AAO notes that section 274(c) is not a ground of inadmissibility that may be waived by filing the Form I-601, as noted on the Instructions to the Form I-601. *See Instructions for I-601, Application for Waiver of Grounds of Inadmissibility*. Counsel asserts that the applicant obtained admission to the United States through fraud or misrepresentation, and the applicable ground of inadmissibility would be section 212(a)(6)(C)(i) of the Act.

and admitted to the United States by fraud or willful misrepresentation, and the filing of the Form I-601 by counsel, and the subsequent I-601 appeal, are without merit. Any evidence concerning whether the applicant was inspected and admitted to the United States and therefore eligible for adjustment of status 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.

The field office director concluded that the applicant has failed to establish that she used a fraudulent passport to gain admission to the United States. Further, 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 the applicant was not found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act or any other ground waivable by the filing of Form I-601, and as there is no underlying application for admission pending at this time, the appeal will be dismissed.

ORDER: The appeal is dismissed.