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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**



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Date: JUN 07 2011

Office: PHILADELPHIA

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:

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 rejected 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 China, filed the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) in January 2008, contending that he was inadmissible under 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 entry to the United States by fraud or willful misrepresentation. Specifically, the applicant asserted that he presented a fraudulent passport when he procured entry to the United States. *See Form I-601*, dated January 25, 2008.

The field office director determined that the applicant had failed to establish eligibility to apply for adjustment of status because he had not established that he 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 had failed to establish eligibility 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 Register Permanent Residence or Adjust Status, accordingly. *Decision of the Field Office Director to Deny the Applicant's Form I-485*, dated April 5, 2010.

In a separate decision, the field office director noted that the applicant's Form I-485 was denied as the applicant had failed to establish his manner of entry to the United States, and the Form I-601 was rejected. *Decision of the Field Office Director to Reject Form I-601*, dated April 5, 2010.

On the Form I-290B, Notice of Appeal (Form I-290B), counsel for the applicant indicated that a separate brief and/or additional evidence would be submitted within 30 days. On May 11, 2011, the AAO sent a fax to counsel, stating that to date, the AAO had no record that any further evidence and/or brief was ever received, and requesting that counsel submit a copy of the brief and/or evidence to the AAO, along with evidence that it was originally filed with the AAO within the 30 day period requested, within five business days. On May 12, 2011, the AAO received a copy of a brief in support of the appeal the rejection of the Form I-601. The record is considered complete and was reviewed in rendering this decision.

As noted above, the field office director concluded that it had not been established that the applicant was inspected and admitted or paroled to the United States. 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 the applicant had failed to establish eligibility to adjust status under section 245(i) of the Act. The field office director concluded that the applicant was consequently not eligible to adjust status.

In the present matter, 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 or paroled to the United States by fraud or willful misrepresentation as the applicant claimed. The field office director determined that the applicant had failed to establish that he was inspected and admitted or paroled 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 or paroled to the United States or that the applicant is eligible to adjust 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.¹

The field office director concluded that the applicant has failed to establish that he used a fraudulent passport to gain admission to the United States or alternatively, that he was eligible to adjust under section 245(i) of the Act. 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.

¹ The record indicates that counsel filed a Motion to Reopen the Form I-485 denial on May 7, 2010. Said motion remains unadjudicated by the USCIS-Philadelphia at this time.