



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **FEB 28 2013**

Office: NEWARK, NJ

FILE: [Redacted]

IN RE: [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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

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

The applicant is a native and citizen of India who claims to be inadmissible to the United States 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 admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks 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 his spouse.

The director concluded that the applicant failed to establish he is eligible to adjust his status to that of a lawful permanent resident under section 245(a) of the Act because there was insufficient evidence to establish that the applicant was admitted or paroled into the United States. The director further found that the applicant failed to establish he is eligible to adjust his status under section 245(i) of the Act because he failed to demonstrate that he falls within one of the enumerated classes of eligible individuals under that statute. Therefore, the field office director found that the applicant had no basis to file a waiver application or adjust his status. The field office director denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), and his Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), on the same day. *See Decisions of the Field Office Director*, dated April 20, 2012.

On appeal, counsel asserts that new evidence consisting of a letter from [REDACTED] Airlines and a copy of an airline ticket he purchased under the assumed name prove that the applicant arrived in [REDACTED] on February 4, 2001. Counsel asserts that the new evidence corroborates the applicant's statement that he entered the United States using a photo-substituted passport.

The evidence of record includes, but is not limited to: counsel's brief, statements from the applicant and his spouse, medical evidence for the applicant's spouse including a psychological evaluation, identification and relationship documents, and financial evidence. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The applicant claims he entered the United States between February 2 and February 4, 2001, using a photo-substituted passport issued to "[REDACTED]." The applicant further states that after he was admitted to the United States, he mailed the passport and the Form I-94 to India, but he did not make copies of the documents before doing so.

A Form I-601 waiver application is viable when there is a pending Form I-485 application or immigrant visa application. In this case, as described above, the applicant's Form I-485 was denied on April 20, 2012, based on the applicant's failure to establish his eligibility to adjust his status to that of a lawful permanent resident under section 245(a) of the Act or section 245(i) of the Act. *Decision of the Field Office Director, supra.* The issues counsel raises on appeal appear to concern the applicant's eligibility to file Form I-485 and adjust his status to that of lawful permanent resident based on his purported entry using fraudulent documents. The AAO has no authority to review the field office director's denial of an application for adjustment of status.

There is no indication in the record that the applicant has filed a motion to reopen the denial of his Form I-485 and no indication any such motion was approved. Because the applicant does not have an underlying Form I-485 adjustment application to support the filing of his Form I-601 waiver application, no purpose would be served in discussing the hardship to his spouse and whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.