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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

Date: JUL 12 2013

Office: NEW YORK

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Nigeria who filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) in May 2012 contending inadmissibility to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act).

The district director determined that the applicant had failed to establish eligibility to apply for adjustment of status because he had not established that he entered upon inspection or parole, as required by section 245(a) of the Act. The district director further noted that the applicant was not statutorily eligible to adjust status under section 245(i) of the Act and denied the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485), accordingly. *Decision of District Director*, June 26, 2012. The district director reviewed the applicant's motion to reopen and reconsider the Form I-485 denial, noted that the need for an inadmissibility waiver was not the sole basis, stated that the applicant had not established having been inspected and admitted as required by section 245(a), and thus found the applicant failed to provide grounds for reopening or reconsidering the Form I-485 application. *Decision of District Director*, November 19, 2012.

In a separate decision, the district director concluded that as the applicant was not eligible to adjust status, the Form I-601 application must be denied for lack of merit. *Decision of District Director*, November 19, 2012. On appeal, counsel for the applicant submits documentation in support of the applicant's assertion that he was inspected and admitted to the United States in April 1996 after presenting a passport and visa issued in the name of another person.

Section 245 states, in pertinent part:

- (a) The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the [Secretary of Homeland Security], in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

As noted above, the district director concluded that it had not been established that the applicant was inspected or admitted to the United States using a fraudulent passport and visa. 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 district director further noted that section 245(i) of the Act does not

provide relief to the applicant for not having been inspected, admitted, or paroled, and concluded that the applicant was consequently ineligible 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 district director had found that the applicant had by fraud or willful misrepresentation procured admission to the United States. The district director determined, however, that the applicant had failed to establish that he was inspected 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 thus eligible for adjustment of status, must be submitted to the district 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 record reflects that the district director denied the applicant's motion to reopen or reconsider and the AAO has no jurisdiction over an appeal from the denial of an application for adjustment of status.¹

The district director concluded that the applicant failed to establish having procured admission to the United States by fraud or misrepresentation. Further, as the district director determined that the applicant is statutorily ineligible to apply for adjustment of status, denied the applicant's Form I-485, and then denied his motion to reopen or reconsider that denial, there is no underlying application for admission on which to base an application for waiver of grounds of inadmissibility. As there is no pending application for admission and where a waiver of inadmissibility would not provide grounds to alter the adjustment determination, no purpose would be served in considering the merits of the waiver application, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement.