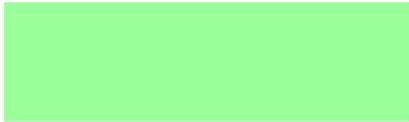




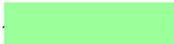
U.S. Citizenship
and Immigration
Services

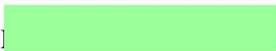
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Date: SEP 26 2013

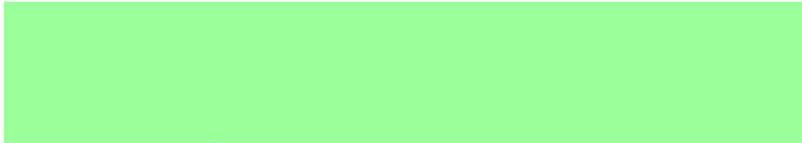
Office: BALTIMORE

FILE: 

IN RE: Applicant: 

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 (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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Sierra Leone 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. She 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 her spouse.

The District Director concluded that the applicant failed to establish she is eligible to adjust her 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 District Director further found that the applicant failed to establish she is eligible to adjust her status under section 245(i) of the Act because she failed to demonstrate that she falls within one of the enumerated classes of eligible individuals under that statute. Therefore, the District Director found that the applicant had no basis to file a waiver application or adjust his status. The District Director denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), and her 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 January 24, 2013.

On appeal, counsel asserts that the applicant submitted numerous affidavits from her friends and family who have knowledge and information as to the applicant's entry into the United States and that these should suffice as proof of her entry. The applicant also submitted an affidavit stating that she did not keep the passport she used or the I-94 arrival/departure record she received when she entered the United States on September 30, 2002.

The evidence of record includes, but is not limited to, counsel's letters and briefs, immigration applications and petitions, documents establishing relationships and identity, and affidavits from the applicant and her relatives concerning her travel to the United States.

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 she entered the United States on September 30, 2002 using the passport of [REDACTED] a British national. The applicant further claims that she fled Sierra Leone and borrowed [REDACTED] passport after agreeing to send it back to her once the applicant arrived in the United States. The applicant states that her attempts to locate [REDACTED] using Internet and phone searches have been unsuccessful.

The District Director concluded that the applicant failed to submit proof of her claimed entry in 2002. As a result he found she did not establish her eligibility to adjust her status to that of lawful permanent resident under the Act.

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 January 24, 2013, based on the applicant's failure to establish her eligibility to adjust her status to that of a lawful permanent resident under section 245(a) or section 245(i) of the Act. *Decision of the District Director, supra*. The issues counsel raises on appeal appear to concern the applicant's eligibility to file Form I-485 and adjust her status to that of lawful permanent resident based on her purported entry using fraudulent documents. The AAO has no authority to review the District 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 her 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 her Form I-601 waiver application, no purpose would be served in discussing the hardship to her spouse and whether she merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.