



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **AUG 13 2014** Office: WEST PALM BEACH, FL FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Field Office Director, West Palm Beach, Florida. 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 China who asserts she is 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), claiming to have procured admission into the United States using a photo-substituted passport belonging to another person. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and two U.S. citizen children in the United States.

The Field Office Director found the applicant failed to establish eligibility to apply for adjustment of status, because she had not established that that she was either admitted or paroled, as required by section 245(a) of the Act. Moreover, the Field Office Director also concluded that the applicant also would not qualify for adjustment of status under section 245(i) of the Act, because the Form I-130, Petition for Alien Relative (Form I-130), filed on her behalf, was submitted after April 30, 2001. The Field Office Director denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), accordingly. *Decision of the Field Office Director to Deny the Applicant's Form I-485*, dated March 29, 2013.

In a separate decision, the Field Office Director concluded that because the applicant was not eligible to adjust status, her Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), must be denied because no waiver is available to applicants who cannot adjust because they were not admitted or paroled into the United States. *Decision of the Field Office Director to Deny the Applicant's Form I-601*, dated March 29, 2013.

On appeal, filed April 30, 2013 and received by the AAO on April 14, 2014, the applicant asserts that she used a photo-switched passport belonging to another person to gain admission into the United States on April 24, 1998, and that the I-601 decision reflects a "big misunderstanding." She provides photocopied pages of the passport she claims to have used to enter the United States and additional evidence regarding the hardship her U.S. citizen husband and children would experience if she is not permitted to become a lawful permanent resident.

The record includes, but is not limited to, an affidavit from the applicant; documents establishing relationships and identity; two psychosocial evaluations of the qualifying spouse; financial documentation; and an approved Form I-130, with accompanying documentation. The entire record was reviewed and considered in rendering this decision.

As noted above, the Field Office Director concluded that the applicant had not established that she 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. The evidence the applicant provides on appeal, photocopies of the passport she claims to have used upon arrival, does not establish her inspection and admission.

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 and admitted to the United States by fraud or willful misrepresentation, and that because her Form I-130 was filed after April 30, 2001, she does not qualify for adjustment of status 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.

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.