(b)(6)

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: DEC 18 2014 Office: ANCHORAGE 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 Field Office Director, Anchorage, Alaska, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico 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 seeking to procure an immigration benefit through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The field office director concluded, in denying the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485), *Decision of Field Office Director,* March 10, 2014, that the applicant had not proven she was inspected and admitted to the United States and therefore denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) for failure to establish eligibility for a discretionary waiver. *Decision of Field Office Director,* March 12, 2014.[1]

On appeal, counsel for the applicant contends that USCIS erred in denying the waiver application, asserts the applicant provided sufficient evidence that she entered upon inspection, and further asserts that the record establishes the applicant's husband will suffer extreme hardship as a result of the applicant's inadmissibility if she is unable to reside in the United States. The record contains documentation including, but not limited to: supporting briefs; hardship and supportive statements; travel documents; birth, marriage, and naturalization certificates; medical records; and financial evidence. The entire record was reviewed and considered in rendering this decision.

The applicant claims to have entered the United States upon admission using the passport of another person in July 2000 and to have remained here since that time. Counsel, therefore, asserts that the applicant is eligible to adjust status under section 245 of the Act. In adjudicating the Form I-485, the field office director issued a Notice of Intent to Deny the application unless the applicant provided evidence of having entered the country as claimed in a car by being waved-through at the Calexico, Mexico port-of-entry. While the record contains the applicant's statement regarding this claimed entry, the field office director found this evidence insufficient to establish she had not entered without inspection.

As noted above, the field office director concluded it had not been established that the applicant was inspected and admitted or paroled to the United States. The field office director further noted that the applicant had failed to establish eligibility to adjust status under section 245(i) of the Act and, consequently, concluded that the applicant was not eligible to adjust status. In immigration proceedings, the burden is on the applicant to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The applicant must prove by a preponderance of evidence that she is fully qualified for the benefit sought. *See Matter of Martinez*, 21 I&N Dec.

[1] The director denied the applicant's Form I-485 for lack of evidence of admission or parole into the country as required for adjustment of status under section 245(a) of the Act. Subsequently, the director denied her Form I-601 for failure to show eligibility for a waiver, where there was neither a pending adjustment application nor one that had been denied for use of fraudulent documents.

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).

In the present matter, the field office director determined that the applicant had failed to establish that she was inspected and admitted or paroled to the United States by fraud or willful misrepresentation. 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.

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 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.