



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JAN 02 2014** Office: TAMPA, FL

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:

[Redacted]

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, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica 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's spouse and mother are U.S. citizens. 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.

The Field Office 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, as the record reflects that she was not inspected and admitted or paroled into the United States or that she was exempt from that requirement. The Field Office Director further found the applicant ineligible to adjust her status under section 245(i) of the Act, as the Form I-130, Petition for Alien Relative, was not filed in a timely manner under that section of the Act. Therefore, the Field Office Director found that approving a waiver for the applicant would be "futile," as she would be ineligible to adjust status under sections 245(a) or 245(i) of the Act. The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), was denied as moot. *Decision of the Field Office Director*, dated August 6, 2013.

On appeal, counsel asserts that the Field Office Director erred in denying the Form I-601 and Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485); the Field Office Director did not give the applicant a chance to explain and rebut the reasons for denial or submit evidence in opposition to the findings; the applicant was denied her constitutional due process rights; and the applicant may be eligible for cancellation of removal. *Form I-290B, Notice of Appeal or Motion (Form I-290B)*, filed August 29, 2013.

The evidence of record includes, but is not limited to, counsel's brief, the applicant's affidavit, medical records, financial records, and the applicant's spouse's statement. The entire record was reviewed and considered in reaching a decision on the appeal.

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

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.

Section 212(i) of the Act provides:

The Attorney General [now Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of

subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The applicant claims she travelled to the United States on November 6, 1995, with a passport and U.S. birth certificate bearing the name [REDACTED] and was inspected at Miami International Airport in the company of her late uncle. She states that she was taken into a room for questioning, released after a few minutes and then admitted into the United States. She further states that her late uncle held all of her travel documents and he never gave her the travel documents after arriving in the United States.

On appeal, counsel cites to Board of Immigration (BIA) cases to support his assertion that the director erred in finding the applicant was not inspected and admitted. He quotes *Matter of V-Q*, 9 I&N Dec. 78 (BIA 1960), a case factually different from the applicant's, in which the BIA addressed the issue of appropriate proceedings for a lawful permanent resident who, shortly after being admitted, was identified as being a prostitute. The BIA held that the individual had been admitted and was not subject to exclusion proceedings, because the examining immigration officer already had favorably determined her admissibility and had communicated this fact to her. The applicant has not shown that the circumstances surrounding the issue of her entry into the United States are comparable. Additionally, counsel cites *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980) and *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), cases involving individuals who claimed they were admitted into the United States without being questioned and without presenting documents. Counsel states that, as the court held in *Quilantan*, the applicant need only show "procedural regularity" in her entry. The record, however, lacks sufficient evidence to establish that the applicant's entry was procedurally regular.

The applicant has not provided sufficient evidence of her purported fraudulent entry to the United States to establish that her entry occurred as she describes in her affidavit. The burden of proof is on the applicant to establish that she was admitted into the United States. If the applicant had established this fact, she would be inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting material facts to procure admission into the United States and require a waiver under section 212(i) of the Act.¹

A Form I-601 waiver application is viable when there is a pending adjustment of status application (Form I-485) or immigrant visa application. In this case, the applicant's Form I-485 was denied on August 6, 2013. As described above, the Field Office Director found the applicant failed to establish her eligibility to adjust her status to that of a lawful permanent resident under sections 245(a) or 245(i) of the Act. There is no indication in the record that the applicant has filed a motion to reopen

¹ The applicant would not be not inadmissible under section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship, as she claims to have done so prior to September 30, 1996, the effective date of that section of the Act.

the denial of her Form I-485 and no indication any such motion was approved. Although counsel indicates on Form I-290B that this appeal concerns “Form I-601/Form I-485,” the AAO has no authority to review a denial of a Form I-485. Therefore, it will not address counsel’s assertions related to the Field Office Director’s denial of the applicant’s Form I-485.

Furthermore, the AAO does not have jurisdiction over cancellation of removal cases and therefore will not address counsel’s claims related to cancellation of removal. Similarly, constitutional issues are not within the appellate jurisdiction of the AAO; therefore counsel’s due process claim may not be addressed in this decision.

Because the applicant was found ineligible to adjust status for reasons other than her inadmissibility under section 212(a)(6)(C), no purpose would be served in addressing hardship to a qualifying relative 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.