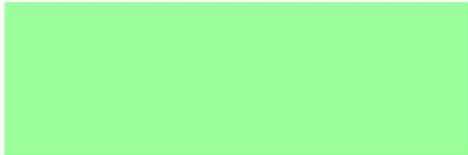




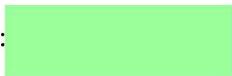
**U.S. Citizenship
and Immigration
Services**

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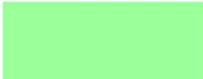


DATE: **JUN 23 2014**

Office: NEW YORK

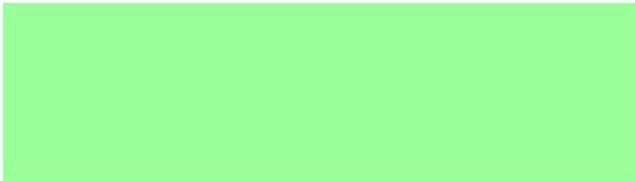
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IN RE:

Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the 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 District Director, New York, New York, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of China, filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 26, 2011, contending that she was inadmissible 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 entry to the United States by fraud or willful misrepresentation. Specifically, the applicant asserted that she presented a fraudulent passport when she procured entry to the United States. *See Affidavit*, August 17, 2011. She seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband.

The district director determined the applicant had failed to establish eligibility to apply for adjustment of status because she had not established that she was either inspected and admitted or paroled, as required by section 245(a) of the Act. The district director further noted the applicant had failed to establish eligibility to adjust status under section 245(i) of the Act. The district director concluded that the applicant was statutorily ineligible for adjustment of status and denied the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485), accordingly. *Decision of the District Director*, July 3, 2012.

The district director noted that the applicant had not been found inadmissible under section 212(a)(6)(C)(i) of the Act and had failed to establish having procured U.S. admission by fraud and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of District Director*, July 3, 2012.

On appeal, counsel for the applicant provides a brief contending that prior counsel erroneously stated in the first Form I-485 that the applicant had entered the country without inspection. The record contains documentation including, but not limited to: the applicant's statement and supporting affidavits; a hardship statement; a waiver application; and prior immigrant petitions and benefits applications. The entire record was reviewed and considered in rendering this decision.

The record reflects that the applicant has filed two sets of adjustment and waiver applications. She filed the first Form I-485 and Form I-601 on November 18, 2005, both claiming her U.S. arrival was without inspection. We note that she provided an affidavit to support her claim, which is consistent with the claim made on the Form I-130 petition filed December 28, 2001 on her behalf. USCIS denied her application for adjustment of status on two grounds: the applicant was ineligible under section 245(a) of the Act for failure to show she was admitted or paroled, as well as under section 245(i) of the Act because her Form I-130 petition was not filed on or before April 30, 2001. The applicant filed a motion to reopen or reconsider the denial of her application for adjustment of status claiming that she had not entered without inspection (EWI), but rather had been admitted using a photo-substituted passport belonging to another person. After interviewing the applicant, USCIS denied the motion on April 27, 2007 based on the failure to establish her manner of entry to the United States.

On September 26, 2011, the applicant filed new adjustment and waiver applications, both claiming she entered the country using a photo-substituted passport rather than without inspection, as claimed earlier. After considering the record evidence, USCIS denied the second Form I-485 and, accordingly, denied the Form I-601. As described above, the district director found the applicant failed to establish eligibility to adjust status to that of a lawful permanent resident under section 245(a) of the Act or section 245(i) of the Act. There is no indication that the applicant has filed a motion to reopen or reconsider the denial of her Form I-485 and no indication any such motion was approved.

The district director concluded that the applicant had not established she was inspected and admitted or paroled to the United States. In immigration proceedings, 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 found the applicant ineligible to adjust status, and we must accept that decision in reviewing the waiver denial.¹

As the district director determined the applicant to be 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. Any evidence concerning whether the applicant is eligible to adjust 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.

In the present matter, section 212(a)(6)(C)(i) of the Act would only be applicable, thereby requiring the filing of a Form I-601 by the applicant, if the district director had found the applicant to have been inspected and admitted or paroled into the country by fraud or misrepresentation. As the district director determined the applicant failed to establish the manner of her U.S. entry, the filing of the Form I-601 and the subsequent I-601 appeal are without merit.

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. 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.

ORDER: The appeal is dismissed.

¹ The AAO does not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under section 245 of the Immigration and Nationality Act.