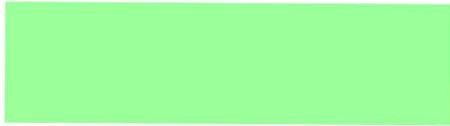




**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **OCT 08 2014** Office: OKLAHOMA CITY File:

IN RE: Applicant:

APPLICATIONS: 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, Oklahoma City, Oklahoma, 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 Nigeria who was found 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 his U.S. citizen spouse.

The field office director concluded the applicant had not shown extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of Field Office Director*, September 13, 2013. Subsequently, the field office director found the applicant ineligible for adjustment of status, finding insufficient evidence that he had used his brother's passport and permanent residence card to procure admission, and denied the Application to Register Permanent Residence or Adjust Status (Form I-485).¹ *Decision of Field Office Director*, September 27, 2013.

On appeal, counsel for the applicant contends that USCIS erred in denying the waiver application, asserts the applicant provided sufficient evidence that he entered upon inspection using his brother's documents, and further asserts that the record establishes the applicant's wife will suffer extreme hardship as a result of the applicant's inadmissibility if he 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; 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 and green card of his brother on February 14 or 15, 2001, 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. However, while the record indicates that the passport belonging to the applicant's brother was used to gain admission, the field office director found this evidence insufficient to establish that it was the applicant rather than his brother – the passport holder – whose U.S. entry is reflected in his passport.

As noted above, the field office director concluded that 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. The field office director concluded that the applicant was consequently 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

¹ The field office director denied the applicant's Form I-485 on August 8, 2012 for lack of evidence of admission or parole into the country as required for adjustment of status under section 245(a) of the Act. USCIS reopened the Form I-485 on October 22, 2012 and again denied the Form I-485 on September 27, 2013 for insufficient evidence the applicant had, as he claimed, entered upon inspection using he brother's passport.

preponderance of evidence that he is fully qualified for the benefit sought. *See 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).

In the present matter, the field office director determined that the applicant had failed to establish that he 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.