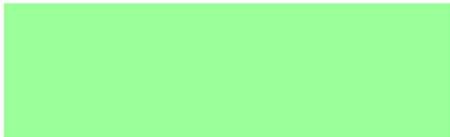




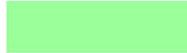
U.S. Citizenship  
and Immigration  
Services

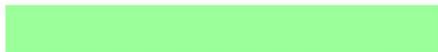
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Date: **OCT 15 2014**

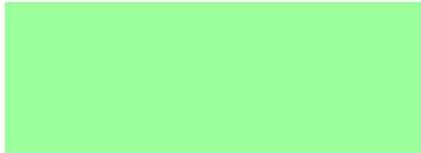
Office: LAWRENCE

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 waiver application was denied by the Field Office Director, Lawrence, Massachusetts. 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 Ecuador 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 is the spouse of a U.S. citizen and the beneficiary of an approved Form I-130, Petition for Alien Relative. He 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 with his spouse.

The Field Office Director concluded that the applicant failed to establish he is eligible to adjust his status to that of a lawful permanent resident under section 245(a) of the Act because there was insufficient evidence to establish that the applicant was admitted or paroled into the United States. The Field Office Director further found that the applicant failed to establish he is eligible to adjust his status under section 245(i) of the Act because he failed to demonstrate that he falls within one of the enumerated classes of eligible individuals under that statute. The Field Office Director further found that the applicant had no basis to file a waiver application or adjust his status. The Field Office Director denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), and his Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), on the same day. *See Decisions of the Field Office Director*, dated January 28, 2014.

On appeal, counsel asserts that the applicant's Form I-485 should be reconsidered because he has provided sufficient evidence to verify his claim that he was inspected and admitted to the United States on July 31, 1999 using the passport and visa of another person, and that he has established that his spouse will suffer extreme hardship if the applicant is forced to leave the United States.

The record includes, but is not limited to, counsel's memorandum of law in support of Form I-290B, statements from the applicant and his spouse, a psychological report for the applicant's spouse, financial documentation, and information on conditions in Ecuador.

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

- (i) 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.

The applicant claims he entered the United States on July 31, 1999 using the passport and visa of [REDACTED] also a citizen of Ecuador, and that he was inspected and admitted to the United States using those documents. The applicant claims that he then returned the documents back to Mr. [REDACTED]

The Field Office Director concluded that the applicant failed to submit proof of his claimed entry in 1999 using the passport of another individual, finding that the applicant's possession of the passport at the time of his adjustment of status interview did not establish that he was the person admitted with the document in 1999. As a result, the Field Office Director found he did not establish his eligibility to adjust his status to that of lawful permanent resident under the Act.

A Form I-601 waiver application is viable when there is a pending Form I-485 application or immigrant visa application. In this case, as described above, the applicant's Form I-485 was denied on January 28, 2014, based on the applicant's failure to establish his eligibility to adjust his status to that of a lawful permanent resident under section 245(a) or section 245(i) of the Act. *Decision of the Field Office Director, supra.*

The record indicates that the applicant filed a motion to reopen and reconsider the denial of his Form I-485 on February 27, 2014. The Field Office Director determined that, after a complete review of the record of proceeding, including the motion, the grounds for denial had not been overcome, reaffirming the decision to deny the Form I-485. *See Decision of the Field Office Director, dated May 21, 2014.*

Section 212(a)(6)(C)(i) of the Act 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 he was inspected and admitted to the United States by fraud or willful misrepresentation, and thus the filing of the Form I-601 and the subsequent I-601 appeal are without merit. Further, because the applicant was found ineligible for adjustment of status and does not currently have an underlying Form I-485 application, no purpose would be served in discussing the hardship to his spouse and whether he 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.