U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 0 3 2015

FILE:
APPLICATION RECEIPT#:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nigeria who filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) claiming to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant contends that he entered the United States using a passport and visa issued in the name of another person, thus having been inspected and admitted to the United States, albeit through misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

In a separate decision, the field office director found that the applicant failed to establish that 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 concluded that the record established that the applicant entered the United States without inspection rather than with a fraudulent passport and visa, therefore the misrepresentation he claims to have committed has not been established. 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 did not have a petition or an application for a labor certification filed on his behalf on or before April 30, 2001. Therefore, the field office director found that the applicant's Form I-485 is not supported by any evidence of eligibility for adjustment of status and denied the Form I-485 accordingly. *See Decision of the Field Office Director denying Form I-485* dated dated September 29, 2014.

In denying the Form I-601, the field office director noted that the applicant failed to establish he entered the United States with a fraudulent passport and visa. Nonetheless, the field office director evaluated the applicant's claim of hardship to his U.S. citizen spouse and concluded that the applicant failed to establish extreme hardship to a qualifying relative. The waiver application was denied accordingly. *Decision of the Field Office Director denying Form I-601* dated September 29, 2014.

On appeal, the applicant contends that the field office director incorrectly determined that he did not commit fraud or misrepresentation and therefore does not require a waiver. The applicant asserts that the record was not thoroughly reviewed because he has admitted that he committed misrepresentation to enter the United States. The applicant asserts that he entered the United States on September 21, 1994, using a passport and visa under another name and thus was admitted. On appeal the applicant did not submit additional documentation of hardship to a qualifying relative, but states that his spouse has lived in the United States for many years and was granted asylum from Nigeria and that her income is not enough to pay expenses.

The record shows that the applicant filed an Application for Asylum (Form I-589) in November 1994 in which he claimed that he had departed Nigeria in July 1994 and described his route of travel through several countries before entering the United States via Mexico on September 17, 1994. On June 8, 1995, following an interview with an asylum officer, the applicant's case was referred to an immigration judge, who denied the application on May 3, 1996, but granted the applicant a period of

voluntary departure, which later became a final order of removal. At his November 2013 interview for adjustment of status, the applicant presented a passport in the name of another person that he claimed to have used to enter the United States on September 21, 1994. The applicant contends that he had taken the name of a wealthy maternal uncle, , because he thought that with that name he would be able to obtain visas more easily than with his own name. The applicant contends that he got a Nigerian passport through a friend and then traveled in 1993 to Germany, remaining for 15 months before obtaining a visa to the United States. The applicant states that after arriving in the United States he retained an attorney who prepared his asylum application and advised him to claim that he had entered the United States without inspection near the California, Port of Entry. The applicant states that he continued with his attorney's advice because he was afraid he would be deported if he told the truth.

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. 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 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 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 the present matter, the field office director concluded that the applicant has failed to establish that he used a fraudulent passport to gain admission to the United States and thus establish his eligibility to adjust his status under section 245(a) of the Act or, alternatively, under section 245(i) of the Act. Section 212(a)(6)(C)(i) of the Act would only be applicable, thereby requiring the filing of the Form I-601, if the field office director had found that the applicant had been inspected and admitted or paroled to the United States by fraud or willful misrepresentation as the applicant claimed.

Any evidence concerning whether the applicant was inspected and admitted or paroled to the United States and is eligible to adjust status must be addressed in a motion to reopen or reconsider the denial of Form I-485, pursuant to the laws and regulations in place. The record shows that the applicant has filed a motion to reopen the denial of his Form I-485 with the field office direcror, and no decision on the motion has been issued.

The applicant was not found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, but was found ineligible to adjust status for reasons other than an inadmissibility ground waivable by the filing of Form I-601. No purpose would be served in examining whether the applicant has established extreme hardship to a qualifying relative or would otherwise be eligible for a waiver, and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed.