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



Date: **JUN 19 2013**

Office: DETROIT

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Lebanon, filed the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) in August 2012, contending that she was inadmissible because she "entered the USA without inspection on 7/1999...." See *Form I-601*, dated August 7, 2012.

The director determined that 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 director further noted that the applicant had failed to establish eligibility to adjust status under section 245(i) of the Act. The director concluded that the applicant was statutorily ineligible for adjustment of status and denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, accordingly. *Decision of the Director to Deny the Applicant's Form I-485*, dated August 11, 2012.

In a separate decision, the field office director noted that the applicant's Form I-485 was denied as the applicant had failed to establish lawful entry or that she was a beneficiary of a properly filed immigrant petition or labor certification filed on or before April 30, 2001. The field office director concluded that there is no waiver available for entering the United States without inspection, the Form I-601 is denied. *Decision of the Field Office Director*, dated October 16, 2012.

On appeal, the applicant contends that she entered the United States without inspection on July 5, 1999 and she has not left the United States. She notes that she is appealing so she will be permitted to adjust her status in the United States. See *Letter from* [REDACTED] dated November 10, 2012. The record is considered complete and was reviewed in rendering this decision.

As noted above, the 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 petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). 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 director further noted that the applicant had failed to establish eligibility to adjust status under section 245(i) of the Act. The director concluded that the applicant was consequently not eligible to adjust status.

As correctly noted by the field office director, the applicant's entry without inspection cannot be waived by filing the Form I-601.<sup>1</sup> The filing of the Form I-601 and the subsequent I-601 appeal are

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<sup>1</sup> The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with two exceptions - petitions for approval of schools under § 214.3 are now the responsibility of

without merit. 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 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 applicant was not found to be inadmissible to the United States under any 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.

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Immigration and Customs Enforcement (ICE), and applications for S nonimmigrant status under § 214.2(t) are now the responsibility of the Fraud Detection and National Security (FDNS) office of USCIS. The AAO cannot exercise appellate jurisdiction over additional matters on its own volition, or at the request of an applicant or petitioner.