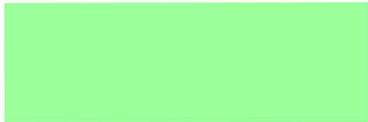




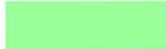
U.S. Citizenship
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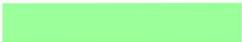
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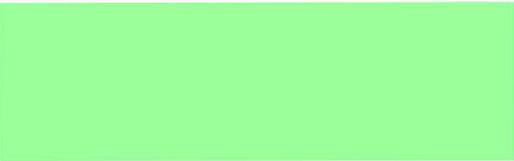
OFFICE: WASHINGTON, D.C.

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:



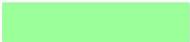
INSTRUCTIONS:

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, Washington, D.C., denied the waiver application and a subsequent appeal is now before the AAO. The appeal will be dismissed.

The applicant is a native and citizen of Guinea who entered the United States with an F-1 visa on October 20, 1995, with authorization to remain in the United States until December 31, 1999. The applicant remained in the United States beyond that date. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), to waive unlawful presence in the United States.

The Field Office Director concluded that the applicant's submitted application for a waiver of inadmissibility, Form I-601, does not waive his failure to maintain lawful status in the United States. *See Decision of Field Office Director*, dated June 11, 2012.

Counsel for the applicant asserts that the director's decision is erroneous and contrary to law. Counsel further asserts that the decision is incorrect in stating that the applicant is ineligible for a Form I-601, submitted to waive his failure to maintain lawful status in the United States.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(B) ALIENS UNLAWFULLY PRESENT.-

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
 - (I) was unlawfully present in the United states for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or
 - (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully

resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

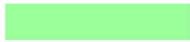
The record reflects that the applicant entered the United States pursuant to an F-1 visa on October 20, 1995 with authorization to remain in the United States until December 31, 1999. The applicant remained in the United States beyond that date, but there is no indication that he departed from the United States since his entry on October 20, 1995. The applicant's submitted applications, including a Form I-589, Application for Asylum and for Withholding of Removal, Form I-601, Application for Waiver of Ground of Inadmissibility, and Form I-485, Application to Register Permanent Residence or Adjust Status, all reflect that the applicant's last entry to the United States was on October 20, 1995. As the applicant has not departed or been removed from the United States since the effective date of the unlawful presence provisions, April 1, 1997, he is not inadmissible under section 212(a)(9)(B)(i)(II) for having departed the United States after accruing one year or more of unlawful presence.

The field office director determined that the applicant had failed to establish eligibility to apply for adjustment of status under section 245(a) of the Act because he failed to maintain lawful status in the United States and is not an immediate relative, as his spouse is not a U.S. citizen. 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 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 on Form I-485, Application to Register Permanent Residence or Adjust Status*, dated June 11, 2012.

In a separate decision, the field office director noted that the applicant is not eligible to adjust status under section 245(a) of the Act and that eligibility to adjust status under section 245(i) of the Act does not require the filing of a Form I-601. As the field office director concluded that there is no waiver available for failing to maintain lawful status in the United States, the Form I-601 was denied. *Decision of the Field Office Director*, dated June 11, 2012.

As correctly noted by the field office director, the applicant's failure to maintain lawful status in the United States cannot be waived by filing the Form I-601. The filing of the Form I-601 and the subsequent I-601 appeal are without merit. Any evidence concerning whether the applicant maintained lawful status in the United States or is an immediate relative of a U.S. Citizen, or whether he may be 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. 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).

(b)(6)



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NON-PRECEDENT DECISION

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.