



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

(b)(6)

Date: **MAY 12 2014**

Office: NEW YORK, NEW YORK

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:

SELF-REPRESENTED

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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who filed an Application to Register Permanent Residence or Adjust Status (Form I-485) under section 245 of the Immigration and Nationality Act (the Act) which was denied on June 19, 2013. The applicant filed a Form I-601 waiver application based on a belief that he was inadmissible under section 212(a)(9)(B)(i), 8 U.S.C. § 1182(a)(9)(B)(i), for having been unlawfully present in the United States for a period of either more than 180 days but less than one year, or more than one year, and seeking readmission within three or ten years of his last departure from the United States. In her June 19, 2013 decision regarding the applicant's waiver application, the district director stated that the applicant improperly filed a waiver application. The decision states that on April 20, 1999, the applicant entered the United States without inspection and has never departed. The decision states further that the applicant was found ineligible for Adjustment of Status under section 245(i) of the Act. The waiver application was found to be improperly filed and was denied accordingly.

On appeal, the applicant's spouse states that she disagrees with the district director's decision because she has a medical condition and that she was told that the waiver application was for applicants who entered illegally or committed fraud to enter the United States.

The record indicates that the applicant's application for lawful permanent residence was denied because he entered the United States without inspection and did not meet the requirements to apply for adjustment of status under section 245(i). Filing a waiver application will not overcome the applicant's immigration violation. A Form I-601 is used to overcome certain kinds of immigration violations. Entering without inspection is not an immigration violation that can be waived by filing a Form I-601. Types of immigration violations that can be waived by filing a waiver application include: unlawful presence; entering or attempting to enter the United States by fraud or misrepresentations; and/or certain kinds of criminal convictions. The applicant is not inadmissible for having unlawful presence because he has not departed the United States, as required by the law. The current record also indicates that he has no criminal record and there is no indication that he entered the United States through fraud or misrepresentation. Thus, at the present time, there is no reason for the applicant to file a waiver application. The appeal of the denial of the waiver must be dismissed as the waiver application is not necessary.

We also note that the AAO cannot review the denial of the applicant's Form I-485 adjustment application. The AAO does not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under section 245 of the Immigration and Nationality Act.

As stated above, the applicant has been found ineligible to apply for adjustment of status and has not been found inadmissible for a violation of immigration law for which there is a waiver. Thus, the appeal of the denial of the waiver must be dismissed as it is not necessary.

ORDER: The appeal is dismissed.