U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22737515

Date: SEP. 23, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of the Dominican Republic currently residing in the Dominican Republic, is the beneficiary of a Form I-130, Petition for Alien Relative, filed on his behalf. A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant states that he is inadmissible for multiple criminal convictions and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative.

The Director of the Nebraska Service Center denied the application, concluding that the Applicant was not eligible to file Form I-601, Application to Waive Inadmissibility Grounds. The matter is now before us on appeal.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

If a noncitizen is inadmissible under a provision of section 212(a) of the Act and that provision has an available waiver under section 212 of the Act, the noncitizen may apply for that waiver "in accordance with the form instructions." 8 C.F.R. § 212.7(a)(1).

II. ANALYSIS

On May 26, 2010, the Applicant was admitted to the United States as a lawful permanent resident (LPR). On [redacted] 2010, the Applicant was convicted of interstate transport of stolen goods in violation of 18 U.S.C. § 2314 and conspiracy to commit interstate transport of stolen goods in violation of 8 U.S.C. § 371. He was sentenced to 51 months in prison. On [redacted] 2014, the Applicant was ordered removed from the United States under section 237(a)(2)(A)(iii) of the Act for having been

convicted of an aggravated felony.[1] The Applicant was removed from the United States on [redacted] 2014, and remains abroad.

On July 15, 2019, the Applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility. The instructions for Form I-601 indicate that the following categories of noncitizens may file a Form I-601:

- Applicant for an immigrant visa or a K or V nonimmigrant visa who is outside the United States, has had a visa interview with a consular officer, and was found inadmissible during that interview;
- Applicant for adjustment of status to lawful permanent residence; or
- Applicant for Temporary Protected Status (TPS). [2]

On Page 2 of his Form I-601, the Applicant indicated that he had no Department of State (DOS) consular case number or location where his immigrant visa application had been made or would be made. He also indicated that he had not filed a Form I-485, Application to Register Permanent Residence or Adjust Status, or Form I-821, Application for Temporary Protected Status.

The Director issued a request for evidence (RFE) requesting documentation that the Applicant had a pending application for an immigrant visa, a K or V nonimmigrant visa, adjustment of status, or TPS. The Applicant did not respond, and the Director denied the Form I-601, finding that the Applicant was ineligible to file for a waiver of inadmissibility.

On appeal, the Applicant states that he is filing based on the approved Form I-130, Petition for an Alien Relative, that was filed on behalf by his U.S. citizen wife. The record indicates that this Form I-130 was filed on April 17, 2014, while the Applicant was in removal proceedings, and requested adjustment of status to that of a legal permanent resident. The Form I-130 was approved on November 5, 2016. However, there is no indication that the Applicant ever filed an accompanying Form I-485. Therefore, he is not an applicant for adjustment of status.

As noted by the Director and supported by the record, there is also no indication that the Applicant has filed for an immigrant visa or a K or V nonimmigrant visa, been interviewed by a DOS consular officer, and been found inadmissible. There is also no indication that he has filed for TPS. Therefore, the record does not indicate that the Applicant is eligible to file Form I-601.

On appeal, the Applicant submits documentation regarding hardship to his qualifying U.S. relatives and whether he merits a favorable exercise of discretion. Because the Applicant's ineligibility to file for a waiver is dispositive of the appeal, we will not address the issues of the Applicant's grounds of inadmissibility or his eligibility for a waiver and hereby reserve them. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7

[1] The status of "lawfully admitted for permanent residence...terminates upon entry of a final administrative order of exclusion, deportation, or removal." 8 C.F.R. § 1.2.

[2] Instructions for Application for Waiver of Grounds of Inadmissibility at 1-3, https://uscis.gov/sites/default/files/document/forms/i-601instr.pdf; *see also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into regulations requiring that form's submission).

(BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.