



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

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21124524

Date: FEB. 17, 2023

Appeal of Dallas, Texas Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). He seeks a waiver of inadmissibility under section 212(h) of the Act to adjust status to that of a lawful permanent resident (LPR) in the United States.

The Director of the Dallas, Texas Field Office (Director) denied the waiver request, concluding that the Applicant did not establish that his LPR spouse would experience extreme hardship if the waiver application was denied.

On appeal, the Applicant contends, among other things, that the Director's decision was unclear as to the section of the Act under which he was inadmissible. He states the finding he had "not met the requirements for INA § 212(i)" was erroneous, as inadmissibility under section 212(a)(2)(A)(i)(I) is waived under section 212(h) of the Act, which "considers hardship to an applicant's sons and daughters as well as spouse and parents." He maintains that "had [he] been aware of the section under which he was allegedly inadmissible, he would have submitted different evidence in support of his waiver."

In these proceedings the Applicant has the burden to establish eligibility for the requested benefit by a preponderance evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Upon de novo review, we will remand the matter to the Director for the entry of a new decision.

The Director initially stated that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation.¹ The Director subsequently stated that the Applicant was inadmissible under section 212(a)(2)(A)(i), for a crime involving moral turpitude²; however, he

¹ The Director determined the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act based on his [] 2013 conviction for forgery. We note however, that the Applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act as his actions which resulted in forgery charges—presenting a fraudulent LPR card to obtain a Texas driver's license or possessing a fraudulent driver's license and social security card did not constitute an attempt to procure a visa, admission into the United States, or a benefit under the Act.

² The record supports a finding that the Applicant is inadmissible under section 212(a)(2)(A)(i) of the Act for a CIMT because his forgery conviction in [] 2013 involved an intent to defraud or harm another. Texas Penal Code § 32.21(b).

concluded that the Applicant had not met the requirements for a waiver under section 212(i) of the Act. Further, the Director considered only hardship to the Applicant's spouse and did not address hardship to the Applicant's other qualifying relatives for a section 212(h) waiver, including his U.S. citizen children and LPR parents. Because the Director did not properly review the waiver application under the correct inadmissibility ground and waiver provision or consider hardship to all qualifying relatives under section 212(h) of the Act, we will remand the matter to the Director. The Director should consider the claims and evidence of extreme hardship under the correct waiver provision and determine whether the Applicant established extreme hardship to one or more qualifying relatives, and if so, whether he warrants a waiver in the exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.