



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

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

In Re: 19049787

Date: MAY 5, 2022

Appeal of Fort Myers, Florida Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant, a native and citizen of Haiti, seeks permission to reapply for admission to the United States under section INA 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Fort Myers, Florida Field Office denied the application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in his case. Specifically, the Director found that granting this application would serve no purpose as the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), had been denied. On appeal, the Applicant contends that the Director erred.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further action pursuant to the discussion below.

The Applicant's application for an immigrant visa was approved, and he filed the instant application and waiver application in conjunction with his Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment of status application). The Director denied the adjustment of status application, concluding that an Immigration Judge, not U.S. Citizenship and Immigration Services (USCIS), had jurisdiction over the case because the Applicant was a subject of a Final Order of Removal.<sup>1</sup> Since the Applicant did not have a pending adjustment of status application, the Director denied the waiver application because the Applicant did not appear eligible for the waiver application and did not provide any evidence for his eligibility.

In the instant matter, the Director noted that the Applicant 1) has an outstanding Final Order of Removal of Deportation, and 2) is inadmissible for fraud and misrepresentation under section 212(a)(6)(C) of the Act. The Applicant's waiver application sought to waive his fraud and misrepresentation inadmissibility under section 212(i) of the Act. Since the waiver application was denied, the Director denied the instant

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<sup>1</sup> According to the record, the Applicant, under an alias, was ordered removed by an Immigration Judge in   1997.

application as a matter of discretion, concluding that the Applicant's fraud and misrepresentation would render him inadmissible to the United States even if the instant application was approved.

On appeal, the Applicant argues that USCIS had jurisdiction over the adjustment of status application and denied the adjustment of status application in error. The Applicant asserts that the instant application and the waiver application were both subsequently erroneously denied because both applications' decisions were based on the adjustment of status application's denial.

The Director's decision in the instant case was dependent upon the denial of the adjustment of status application and, in particular, denial of the waiver application, which was denied because USCIS had no jurisdiction on the adjustment of status application. However, USCIS records indicate the Applicant has filed a motion to reopen and a motion to reconsider the adjustment of status application, and that it is still pending. As the adjudication of that motion to reopen is determinative to the disposition of this case, the Director's decision is hereby withdrawn, and the matter remanded, so that the outcome of the Applicant's motion to reopen the adjustment of status application may be considered.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further action consistent with the foregoing analysis.