



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

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

In Re: 23951551

Date: DEC. 14, 2022

Appeal of St. Thomas, Virgin Islands Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant is a native and citizen of Mexico and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), to adjust status to that of a lawful permanent resident.

The Director of the St. Thomas, Virgin Islands Field Office denied the Form I-601, concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, and that the record did not establish that her qualifying relatives would face extreme hardship if she is unable to remain in the United States. The Director further determined that the Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act.

On appeal, the Applicant submits additional evidence in support of her application.

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 matter as moot.

Section 212(a)(9)(C)(i) Inadmissibility

An individual is inadmissible under this section of the Act if they either 1) have been unlawfully present in the United States for an aggregate period of more than one year and they enter or attempt to reenter the United States without being admitted or 2) depart the United States under an order of removal, and they enter or attempt to reenter the United States without being admitted. On 2001, U.S. Immigration and Customs Enforcement initiated removal proceedings against the Applicant by filing a Form I-862, Notice to Appear (NTA). However, the NTA was cancelled, and the Applicant was permitted to voluntarily return to Mexico. As the Applicant did not depart the United States under an order of removal and there is no evidence that she was in the United States for more than one year prior to entering, or attempting to reenter, the United States, we withdraw the Director's determination that she is inadmissible under section 212(a)(9)(C)(i).

Section 212(a)(6)(C)(i) inadmissibility

Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act.

The Director determined that because the Applicant entered the United States without inspection in [REDACTED] 2001 and gave immigration officials a false date of birth, she is inadmissible under this section of the Act. However, the Applicant's actions were not for the purpose of procuring a visa, admission into the United States, or a benefit under the Act. *See generally* 8 *USCIS Policy Manual*, J.3(B)(1), <https://www.uscis.gov/policy-manual>. At the time she gave immigration officials an incorrect date of birth, she was being processed for removal from the United States. Moreover, her interaction with immigration officials in 2001 does not amount to a request for other documentation, such as a re-entry permit, a refugee travel document, a border crossing card, or a U.S. passport. *See generally* 8 *USCIS Policy Manual*, *supra*, at J.3.B(2). Therefore, the Applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act based on this event and we withdraw the Director's determination. We will dismiss the appeal, as moot, because the Applicant does not need to file a waiver for fraud or willful misrepresentation for these actions.

ORDER: The appeal is dismissed.