U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16630426

Date: FEB. 17, 2022

Appeal of Queens, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

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

The Director of the Queens, New York Field Office denied the application, concluding that the application was moot because, at the time of filing the application, the Applicant's Form I-485, Application to Register Permanent Residence or Adjust States, was already denied.

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 remand the matter to the Director for the entry of a new decision.

I. LAW

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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act.

II. ANALYSIS

The record indicates the Applicant filed his Form I-485 on February 13, 2017. USCIS interviewed the Applicant on September 10, 2019, confronting the Applicant with derogatory information alleging he had provided a fraudulent affidavit to USCIS officers in the past as part of his Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, submission. The Applicant denied that he had made any willful misrepresentations of a material fact. The Director then denied the Applicant's Form I-485 on March 31, 2020, finding the Applicant inadmissible to the United States pursuant to Section 212(a)(6)(C)(i) of the Act and indicated "USCIS did not accord you an opportunity to file [a] waiver of inadmissibility, nor did you apply for a waiver concurrently with your Form I-485."

The Applicant then filed Form I-601, Application for Waiver of Grounds of Inadmissibility, on May 26, 2020, seeking a waiver of inadmissibility under section 212(i) of the Act and admitting that he had submitted a fraudulent affidavit in 2009 when he filed his Form I-360. The Director denied the application on October 7, 2020, as moot since the Applicant no longer had a pending Form I-485 that would make him eligible to adjust status and the Applicant had not submitted his Form I-601 concurrently with his form I-485.

On appeal, the Applicant argues he was not given notice he was inadmissible or an opportunity to apply for a waiver of inadmissibility. We agree. When determining admissibility, the "officer must confirm that the applicant is admissible to the United States or that any inadmissibilities are waived before making a final determination on an adjustment application."[1] Additionally, if a "decision will be adverse to the applicant and is based on derogatory information considered by the Service and of which the applicant is unaware, he shall be advised of this fact and offered an opportunity to rebut the information and present information in his own behalf before the decision is rendered..." 8 C.F.R. § 103.2(b)(16)(i). In this case, the Applicant was questioned about derogatory information which may render him inadmissible but was not informed he could file a waiver of inadmissibility to overcome the charge of inadmissibility. On remand, the Director should review the Applicant's Form I-601 and determine if the Applicant qualifies for a waiver of inadmissibility.

In light of the above, we will remand the matter to the Director to consider the evidence submitted in support of the waiver application and issue a new decision determining whether the Applicant has established extreme hardship to his qualifying relative and whether a favorable exercise of discretion is warranted.

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

[1] *7 USCIS Policy Manual,* A.6(D), https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-6 (providing guidance on the adjudication of Form I-485).