



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

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

In Re: 19895692

Date: FEB. 28, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(i),(h) for material misrepresentation and for unlawful presence.

The Director of the Nebraska Service Center denied the application, affirming the determinations by the Department of State (DOS) that the Applicant was inadmissible for 1) unlawful presence in the United States under section 212(a)(9)(B)(i)(II) of the Act, and 2) for having been convicted of crimes involving moral turpitude under section 212(a)(2)(A) of the Act. The Director then put forth conflicting determinations in denying the application regarding whether the Applicant had established extreme hardship to a qualifying relative, his U.S. citizen spouse. The Director also concluded that the Applicant's convictions were for violent or dangerous crimes, making him subject to a heightened discretionary standard, and the evidence did not establish that he merited a favorable exercise of discretion.

On appeal, the Applicant submits a brief asserting that the Director erred in denying the application. In these proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

When denying an application, the Director must fully explain the reasons for denial to allow the Applicant a fair opportunity to contest the decision and provide the AAO an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying an application, the Director shall explain in writing the specific reasons for denial.

Here, we conclude that the Director's decision does not sufficiently explain the basis for denying the application. Specifically, the Director made conflicting statements regarding whether the Applicant had established extreme hardship to his U.S. citizen spouse, a critical determination within this waiver application. The Director concluded that the Applicant's spouse was a qualifying relative, then indicated

that the Applicant had not “established that [his] qualifying relative would suffer extreme hardship if the waiver is not granted.” The Director later determined in his decision “[it] is apparent that your spouse is experiencing medical, emotional, and financial hardship that *is* extreme due to your November 2017 visa refusal (emphasis added).” We further note that while the Director itemized within the denial some of the evidence that the Applicant submitted to demonstrate extreme hardship to his spouse, such as financial documents, his spouse’s medical records, and affidavits from the Applicant, his spouse, and other family members, the Director erred by not providing the specific reasons as to why the submitted evidence was insufficient to establish his spouse’s extreme hardship. 8 C.F.R. § 103.3(a)(1)(i).

The Director should clearly explain why the Applicant has not established extreme hardship to his spouse, including why the evidence of record does not establish eligibility. Therefore, we are remanding the case to the Director for further review and to provide sufficient explanation of the grounds of denial regarding the evidence in this particular case so that the Applicant more fully understands the Director’s concerns.

The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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