



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

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

In Re: 21783976

Date: JULY 8, 2022

Motion on Administrative Appeals 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 Los Angeles, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish that his U.S. citizen spouse or LPR mother, the only qualifying relatives, would experience extreme hardship upon separation from the Applicant. We dismissed a subsequent appeal, also finding that the Applicant did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's qualifying relatives. The matter is now before us on a motion to reopen and reconsider our decision. Upon review, the motion is granted, and the matter is remanded for the entry of a new decision.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *Id.* § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure admission into the United States is inadmissible. Section 212(a)(6)(C)(i) of the Act. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. Section 212(i) of the Act.

Section 204(1) of the Act provides a waiver or other relief application may be approved despite the death of the qualifying relative if a petition or adjustment application was pending or approved when the qualifying relative died, and the applicant meets the residency requirement (continually residing in the United States at the time of his or her relative's death). In these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

We incorporate our prior decision by reference and will repeat only certain facts as necessary here. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.

On motion, the Applicant asserts that his spouse, who filed the immigrant petition on his behalf, passed away following our prior decision, and in accordance with section 204(I) of the Act, he qualifies to have his U.S. citizen's spouse's death deemed the equivalent of extreme hardship. He also submits a copy of his spouse's death certificate.

An applicant must generally show extreme hardship to a qualifying relative who is alive at the time the waiver application is both filed and adjudicated. Section 204(I) of the Act provides the only exception and allows U.S. Citizenship and Immigration Services (USCIS) to grant a waiver or other form of relief from inadmissibility to a qualifying applicant, even if the qualifying relationship that would have supported the waiver has ended through death. In addition, if the qualifying relative who died was a U.S. citizen or LPR at the time of death and is the same qualifying relative to whom extreme hardship must be established in order to grant a waiver, USCIS treats the qualifying relative's death as the functional equivalent of a finding of extreme hardship.¹

Further, although 8 C.F.R. § 205.1(a)(3)(i)(B) and (C) provide that a Form I-130, Petition for Alien Relative (Form I-130), approval is automatically revoked when the petitioning relative dies, section 204(I) of the Act can still apply to a case that was revoked because the petition can be "reinstated," a procedural mechanism that lets USCIS verify whether section 204(I) applies to a case and, if it does, to decide whether to exercise discretion favorably. There is no form or fee to ask for section 204(I) relief; however, a written request must be made in writing with supporting evidence of eligibility to a USCIS office.

Because the Form I-130 petition filed on the Applicant's behalf was approved when his spouse died, and through the instant motion, he requested that his approved Form I-130 be converted to a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, USCIS must verify whether section 204(I) of the Act applies to his case and, if so, whether he merits this discretionary relief. Therefore, we are remanding the matter for the Director to review whether section 204(I) applies to the Applicant's case and, if so, to decide whether he is eligible for a waiver.

ORDER: The motion to reopen is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ Section 204(1) of the Act provides that noncitizens who meet certain conditions may still have their adjustment and other related applications adjudicated notwithstanding the death of the qualifying relative. Specifically, this section provides discretion where a noncitizen may apply for a waiver of inadmissibility even though the qualifying relative for purposes of extreme hardship has died. Moreover, in cases in which the deceased individual is both the qualifying relative for purposes of section 204(I) of the Act and the qualifying relative for purposes of an extreme hardship determination, the death of the qualifying relative is treated as the functional equivalent of a finding of extreme hardship. See 9 USCIS Policy Manual B.4(C), <https://www.uscis.gov/policymanual> (providing guidance on extreme hardship determinations if a qualifying relative dies).