U.S. Citizenship and Immigration Services

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

In Re: 21122909

Date: JULY 15, 2022

Appeal of Los Angeles County, California 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 and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Los Angeles County, California Field Office denied the application, concluding that because the Applicant's spouse had died, the record did not establish that the Applicant has a qualifying relative who would experience extreme hardship if she were denied admission. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Any foreign national 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 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 foreign national. Section 212(i) of the Act. If the foreign national demonstrates the existence of the required extreme hardship to a qualifying relative(s), then they must also show that USCIS should favorably exercise its discretion to grant the waiver. Section 212(i) of the Act.

Section 204(l) of the Act, 8 U.S.C. § 1154(l), provides that an applicant who, immediately prior to the death of their qualifying relative, was the beneficiary of a pending or approved petition for classification as an immediate relative, who resided in the United States at the time of the death of the qualifying relative, and who continues to reside in the United States, shall have their application for adjustment of status based upon the family relationship described in subsection (2), and any related applications,

adjudicated notwithstanding the death of the qualifying relative, unless a discretionary determination is made that approval would not be in the public interest.

## II. ANALYSIS

The Applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), in January of 2018. In July of 2019, while the waiver application was pending, the Applicant's lawful permanent resident spouse, the only qualifying relative for purposes of the waiver application, passed away. The Director denied the waiver application, concluding that the Applicant did not show that she has a qualifying relative who would experience extreme hardship if she were denied admission.

On appeal, the Applicant argues that her waiver application should be considered for approval under section 204(l) of the Act. According to the Applicant, she has established eligibility for a waiver and the tragic death of her spouse is the type of situation section 204(l) was meant to correct.[1]

Although we are sympathetic to the Applicant's circumstances, we do not find that section 204(l) is applicable here. The Applicant filed for adjustment of status based on an approved Form I-130, Petition for Alien Relative, that was filed by her U.S. citizen daughter. As noted above, one of the conditions of section 204(l)(1) is that the petition (here, the Form I-130) and related applications (here, the application for adjustment of status and the waiver application) must be "based upon the family relationship described in paragraph (2) . . . ." Paragraph 2 states, in relevant part, that "[a]n alien described in this paragraph is an alien who, immediately prior to the death of his or her qualifying relative, was . . . the beneficiary of a pending or approved petition for classification as an immediate relative . . . ." Section 204(1)(2) of the Act. Therefore, the statutory language indicates that the qualifying relative for the Form I-130 petition and related waiver application must be the same person.

Indeed, the USCIS Policy Manual states that "[g]enerally, the applicant must show extreme hardship to a qualifying relative who is alive at the time the waiver application is both filed and adjudicated. Unless a specific exception applies, an applicant cannot show extreme hardship if the qualifying relative has died. [Section] 204(l) [of the Act] provides the only exception." 9 *USCIS Policy Manual* B.4(C), https://www.uscis.gov/policymanual. In discussing section 204(l) of the Act, the Policy Manual specifies that "a noncitizen's deceased relative must meet the definition of qualifying relative in order for the noncitizen to be eligible to continue to seek an immigration benefit *through that person*." 7 *USCIS Policy Manual* A.9(A)(1), https://www.uscis.gov/policymanual (emphasis added). It clarifies that for the purposes of seeking adjustment of status, a qualifying relative under section 204(l) includes, in pertinent part, "the petitioner of an immediate relative immigrant visa petition" or "the petitioner or principal beneficiary of a family-sponsored immigrant visa petition," thus explaining that section 204(1) may apply when the deceased relative is the petitioner of a Form I-130 petition. *Id.*

Here, the Form I-130 petition was filed by the Applicant's daughter, not her spouse. Therefore, although the Applicant's spouse was a qualifying relative for purposes of the waiver application, he

[1] The Applicant does not contest her inadmissibility on appeal, a finding supported by the record and described in the Director's decision which we incorporate here.

was not a qualifying relative for the purposes intended under section 204(l) of the Act. Because section 204(l) is inapplicable, we agree with the Director that the Applicant has not shown she has a qualifying relative who would experience extreme hardship if she were denied admission, as required. The waiver application will therefore remain denied.

**ORDER:** The appeal is dismissed.