



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

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

In Re: 19050660

Date: MAY 5, 2022

Appeal of Fort Myers, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

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

The Director of the Fort Myers, Florida Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant was not eligible to apply for a waiver because he did not have a pending Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment of status application).

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. See section 291 of the Act, 8 U.S.C. § 1361. The Administrative Appeals Office reviews the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for further action pursuant to the discussion below.

With certain exceptions, applicants for an immigrant visa, adjustment of status, or a K or V nonimmigrant visa who are inadmissible under any provision of section 212(a) of the Act for which a waiver are available under section 212 of the Act may apply for the related waiver by filing the designated form. 8 C.F.R § 212.7 (a)(1).

The Applicant's application for an immigrant visa was approved, and he filed the instant waiver application in conjunction with his adjustment of status application. The Director denied the adjustment of status application and concluded that an Immigration Judge, not U.S. Citizenship and Immigration Services (USCIS), had jurisdiction over the case because the Applicant was a subject of a Final Order of Removal.<sup>1</sup> Since the Applicant did not have a pending adjustment of status application, the Director denied the instant application. Specifically, the Applicant did not appear eligible for the waiver application and did not provide any evidence for his eligibility.

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<sup>1</sup> The record indicates that the Applicant was ordered removed, under an alias, by an Immigration Judge in  1997.

The Director did not deny the waiver application on its merits, but denied it based on the outcome of the Applicant's adjustment of status application. USCIS records indicate the Applicant has also filed a motion to reopen and reconsider the adjustment of status application and that it is still pending. As the adjudication of that motion is determinative to the appeal of this waiver application, the Director's decision denying the waiver application is hereby withdrawn. The matter will be remanded to the Director to consider the outcome of the Applicant's motion to reopen and reconsider the adjustment of status application.

ORDER:       The decision of the Director is withdrawn. The matter is remanded for further action consistent with the foregoing analysis.