



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

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

In Re: 23173095

Date: NOV. 7, 2022

Appeal of Newark 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 Newark Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application). The Director concluded the Applicant did not have an adjustment of status or immigrant visa application pending and denied the waiver application on that basis. The Director denied the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, because he was not eligible to adjust his status under section 245(a) or 245(i) of the Act. The matter is now before us on appeal. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review 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 dismiss the appeal as moot.

I. LAW

A 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 discretionary waiver of this inadmissibility ground 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 hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

II. ANALYSIS

The Applicant claims he entered the United States using a false passport bearing another person's name and date of birth. He posits this renders him inadmissible under section 212(a)(6)(C)(i) for committing fraud and misrepresenting a material fact. The Applicant did not present any documentary evidence in support of his claims of how he entered the United States.

After the Director conducted an interview, they denied the Applicant's related Form I-485 concluding he had failed to establish eligibility to adjust status because he had not demonstrated that he was inspected then admitted or paroled, as required by section 245(a) of the Act. Additionally, the Director concluded the Applicant did not qualify for an exemption from the section 245(a) requirements (e.g., section 245(i) of the Act). Although the Director accepted the Applicant's personal testimony relating to his entry, they determined it did not satisfy his burden of proof and the Director required a form of probative evidence. Ultimately, the Director decided the Applicant is not inadmissible for committing fraud or misrepresenting a material fact, and he therefore does not require a waiver application.

The issue on appeal is whether the Applicant has established eligibility for a waiver of inadmissibility. He maintains that he entered the United States with fraudulent documentation and thus, he is eligible to adjust status because he was inspected and admitted. The Applicant further contends that he merits a discretionary waiver of inadmissibility for fraud or willful misrepresentation. He, however, still does not offer sufficiently probative evidence showing his manner of entry into the country, which might support his contention that he is actually inadmissible under section 212(a)(6)(C)(i).

Within the appeal, the Applicant essentially requests that we supplant our determination of the amount of evidentiary weight his personal testimony should be accorded in place of the Director's judgement. The Applicant alleges the Director failed to consider his credible testimony and argues that the Director should have found the credibility of his testimony to overcome the lack of evidence showing his fraudulent entry. However, he offers no legal support for this position.

The regulation at 8 C.F.R. § 245.1(b)(3) includes those who were not admitted or paroled following inspection by an immigration officer within the categories of foreign nationals who are ineligible to apply for adjustment of status to an LPR. And the Form I-485's instructions notified him of the requirements and of the types of evidence he must produce to demonstrate he was inspected and either admitted or paroled into the United States. Those instructions also informed the Applicant that if he was unable to produce the types of primary evidence listed, "and DHS has no record of the admission or parole, U.S. Citizenship and Immigration Services will presume that you came into the United States without admission or parole." That is where the Applicant finds himself now. Due to a lack of sufficient evidence, it is presumed that he was not inspected and then either admitted or paroled into the country.

There is no appeal from the denial of an adjustment application. 8 C.F.R. § 245.2(a)(5)(ii). In essence, we do not possess jurisdiction over the Applicant's Form I-485. Within this appeal on the waiver application, the Applicant asks that we overrule the Director's findings on a separate application, that same Form I-485. The Applicant's collateral attack on the Form I-485's denial cannot be redressed in these waiver application proceedings. The proper venue for that argument would have been a motion filed on the Form I-485 before the Director. The Applicant has not identified any error of fact or law in the Director's denial of his waiver application, as required by 8 C.F.R. § 103.3(a)(1)(v). As the Applicant does not currently have a pending Form I-485, and the Director did not deny the Form I-485 due to an inadmissibility ground, there is no basis for this appeal. Accordingly, this waiver application is unnecessary, and we will dismiss the appeal as moot.

ORDER: The appeal is dismissed.