



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

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

In Re: 29791436

Date: DEC. 18, 2023

Appeal of Atlanta, Georgia Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of India, currently residing in the United States, 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 Atlanta, Georgia Field Office determined that the Applicant had failed to establish eligibility to adjust status because she had not demonstrated that she was inspected and admitted or paroled, as required by section 245(a) of the Act. The Director concluded that had the Applicant been able to establish eligibility to adjust status, she did not demonstrate that the denial of the waiver application would result in extreme hardship to her U.S. citizen spouse. As such, the Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application). The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant maintains that she entered the United States in September 1998 with fraudulent documentation and thus, she is eligible to adjust status because she was inspected and admitted. The Applicant further contends that she merits a discretionary waiver of inadmissibility for fraud or willful misrepresentation because her U.S. citizen spouse would suffer extreme hardship if the waiver were not granted.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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.

A noncitizen 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. There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the noncitizen. Section 212(i) of the Act.

The issue on appeal is whether the Applicant has established eligibility for a waiver of inadmissibility. The Applicant maintains that when she entered the United States, she fraudulently presented another individual's passport and visa and thus needs a waiver of inadmissibility for fraud or willful

misrepresentation. She asserts that she was inspected and admitted and is eligible to obtain a discretionary waiver of inadmissibility. In support, the Applicant explains that someone took the passport she used at entry and instead submits results of a polygraph test as evidence of her truthfulness regarding her inspection and entry in September 1998.

In the present matter, the Director did not find the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act or any other ground waivable by the filing of the waiver application, but rather determined she was statutorily ineligible to adjust status because she had not established she was either inspected and admitted or paroled, as required by section 245(a) of the Act.¹ A waiver application cannot cure this ineligibility, but instead serves the purpose of removing an inadmissibility that bars an applicant from adjusting status. *See* 8 C.F.R. § 212.7(a)(1). As a result, the waiver application was properly denied, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The Applicant argues that she was inspected and admitted or paroled to the United States and is eligible to adjust status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. 5 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). A determination of the Applicant's eligibility to adjust status is outside the scope of this appeal. We cannot exercise appellate jurisdiction over additional matters on our own volition, or at the request of an applicant or petitioner.