



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

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

In Re: 20008634

Date: FEB. 28, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for adjustment of status and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence.

The Director of the Los Angeles, California Field Office determined that the Applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). Pursuant to section 212(a)(9)(B)(i)(II) of the Act, a noncitizen who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a spouse or parent who is a U.S. citizen or lawful permanent resident. Section 212(a)(9)(B)(v) of the Act.

The Director denied the Applicant's Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, her U.S. citizen spouse, would experience extreme hardship if the Applicant were denied a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i). The matter is now before us on appeal.

The Applicant bears the burden of proof to establish eligibility for the requested benefit. 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 return the matter to the Director for the entry of a new decision.

The Director improperly stated in her decision that the Applicant filed the waiver application under section 212(i) of the Act to seek relief for inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation. Any 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 ground of inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. The

Director ultimately concluded that the Applicant is not eligible for a waiver under section 212(i) of the Act.¹

However, as noted above, the Applicant filed the waiver application under section 212(a)(9)(B)(v) of the Act to seek relief for inadmissibility under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence. Therefore, we will remand the matter to the Director to determine the Applicant's eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. Upon remand, the Director should issue a new decision based on a review of the complete record, including the evidence submitted on appeal.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ The Director included section 212(a)(6)(C)(i) of the Act in an attachment to her decision reflecting "Applicable Law/Regulations," together with a section of the Act relating to criminal convictions. Neither of these sections of the Act relates to this case. The Director did not include the applicable ground of inadmissibility (section 212(a)(9)(B)(i)(II) of the Act) in the attachment.