U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20582314

Date: JUN. 14, 2022

Appeal of the Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act) for unlawful presence.

The Director of the Nebraska Service Center denied the application due to the Applicant's failure to respond to the Director's request for evidence (RFE). The Director requested evidence that would establish that the Applicant had been interviewed by a consular officer and found ineligible for an immigrant visa based upon a ground of inadmissibility that can be waived. On appeal, the Applicant submits additional documentation evidencing a visa application and visa refusal.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

The law states that a foreign national 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. Section 212(a)(9)(B)(i)(II) of the Act.

In pertinent part, the instructions to the Form I-601 state that the Form I-601 can be filed by applicants:

(1) for adjustment of status to lawful permanent residence; or
(2) who are outside of the United States, have had a visa interview with a consular officer, and during the interview, were found inadmissible, provided that the applicants applied for: (1) an immigrant visa; or (2) a nonimmigrant K or V visa.

II. ANALYSIS

As previously stated, the Director requested evidence that would establish that the Applicant had been interviewed by a consular officer and found ineligible for an immigrant visa based upon a ground of inadmissibility that can be waived. The RFE notified the Applicant that an individual who is outside the United States may file a Form I-601 only if he or she has been found inadmissible by a consular

officer at an immigrant visa interview or nonimmigrant K or V visa interview. The Director recognized that the Applicant had a pending immigrant visa application but explained that the record lacked evidence of the Applicant being found inadmissible on a ground of inadmissibility that can be waived.

Government records indicate that the Applicant submitted a nonimmigrant B1/B2 (business/tourism) visa application on November 7, 2017. Within the initial I-601 filing, the Applicant provided a notice of ineligibility and inadmissibility from the U.S. consulate in Monterey, Mexico with the boxes checked pertaining to an ineligibility for a visa under Section 214(b) of the Act as well as an inadmissibility under Section 212(a)(9)(B)(i)(II) of the Act.[1] The consular notice also included a handwritten notation that the 10 years for unlawful presence would expire in May 2020. In addition, the Applicant provided evidence that he successfully paid to apply for an immigrant visa on March 11, 2020.

On appeal, the Applicant provides additional evidence of his nonimmigrant B1/B2 visa application, including additional payment confirmation printouts, further instructions on how to schedule a visa appointment, as well as a printout confirming that the Applicant had secured a nonimmigrant B1/B2 visa appointment for November 27, 2017.[2]

As the Director noted, the Form I-601 instructions state that an applicant may file a Form I-601 to obtain relief if the applicant falls within the specific categories listed on the form. Based upon the record, it appears that the Applicant is outside the United States. Thus, the categories relevant to the instant Form I-601 include applicants for immigrant visas, nonimmigrant K visas, or nonimmigrant V visas who have had a visa interview with a consular officer, and during the interview, were found inadmissible. Here, the Applicant has not established that he has had any immigrant visa interviews or has been refused an immigrant visa due to an inadmissibility. While we acknowledge he has paid to apply for an immigrant visa, the evidence does not show that he submitted a Form DS-260 immigrant visa application or scheduled his immigrant visa interview. As the record currently stands, we cannot conclude that he has been interviewed for and has been refused an immigrant visa.

We recognize that the Applicant has applied for and been refused a nonimmigrant B1/B2 visa; however, this visa category is different from both K and V nonimmigrant visas. While the Applicant may have been refused a nonimmigrant B1/B2 visa under Section 214(b) and Section 212(a)(9)(B)(i)(II) of the Act, this does not appear to provide the necessary foundation required to file a Form I-601. Even if the Applicant has been found inadmissible under a waivable ground, such as Section 212(a)(9)(B)(i)(II), he has not yet established that he would be among the category of individuals who may obtain relief through an approved Form I-601. As such, no purpose would be served in analyzing the hardship claims in the record. The Director's decision will be affirmed.

ORDER: The appeal is dismissed.

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[1] As noted on the visa refusal sheet, Section 214(b) of the Act is a nonimmigrant visa ineligibility that cannot be waived. Rather, nonimmigrants must reapply for a visa and establish that they overcome the Section 214(b) ineligibility.

[2] The Applicant did not provide foreign language translations for several documents. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. Id. The Applicant should be aware of this requirement in any future filings.