



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

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

In Re: 18318236

Date: JUNE 15, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Pakistan, has applied for an immigration benefit and seeks a waiver of inadmissibility for unlawful presence under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B). Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides a waiver of this ground of inadmissibility, as a matter of discretion, if refusal of admission would result in extreme hardship to a qualifying spouse or parent of the inadmissible noncitizen.

The Director of the Nebraska Service Center denied the application, concluding that the Applicant is inadmissible for several grounds in addition to unlawful presence, *see id.*, including the U.S. Department of State's conclusion that the Applicant provided material support to a terrorist organization, and for fraud or willful misrepresentation in order to obtain a benefit provided by the Act. *See* sections 212(a)(3)(B) and (a)(6)(C) of the Act, 8 U.S.C. §§ 1182(a)(3)(B), (a)(6)(C). The Director stated, "There is no waiver for inadmissibility under section INA [*sic*] 212(a)(3)(B)(i)(I)." The Director cited *Matter of J-F-D-*, 10 I&N Dec. 694 (INS 1963), stating, "If an applicant would remain inadmissible even if a waiver is granted, that remaining inadmissibility may itself support denial of the waiver application as a matter of discretion. Therefore, USCIS denies your application." The matter is now before us on appeal.

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 remand the matter to the Director for the entry of a new decision.

I. LAW

A noncitizen who has engaged in a terrorist activity is inadmissible. Section 212(a)(3)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(3)(B)(i)(I). For the purposes of section 212(a)(3)(B) of the Act, a "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State)" and which involves any of the following: the hijacking or sabotage of any conveyance; the seizing, or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person to do or abstain from doing any act as an explicit or implicit condition for the release of the seized or detained person; a violent attack upon an internationally

protected person as defined at 18 U.S.C. § 1116(b)(4) or upon the liberty of such a person; an assassination; the use of any biological or chemical agent, nuclear weapon or device, or an explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain) with the intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property; or the threat, attempt, or conspiracy to do any of the foregoing. Section 212(d)(3)(B)(iii) of the Act, 8 U.S.C. § 1182(a)(3)(B)(iii). In relevant part, Section 212(d)(3)(B)(i) of the Act, 8 U.S.C. § 1182(d)(3)(B)(i), provides a waiver of inadmissibility under section 212(a)(3)(B)(i)(I) of the Act if “[t]he Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security . . . determine[s] in such Secretary’s sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection.”

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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this 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, 8 U.S.C. § 1182(i).

Any noncitizen who has been unlawfully present in the United States for one year or more, and who again seeks admission into the United States within 10 years of the noncitizen’s departure or removal from the United States is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). Section 212(a)(9)(B)(v) of the Act provides a waiver of this ground of inadmissibility, as a matter of discretion, if refusal of admission would result in extreme hardship to a qualifying spouse or parent of the inadmissible noncitizen.

II. ANALYSIS

A. Providing Material Support to a Terrorist Organization under Section 212(a)(3)(B) of the Act

As noted above, the Director stated that the State Department found the Applicant inadmissible under section 212(a)(3)(B)(i)(I) of the Act. The Director determined that no waiver is available for this ground of inadmissibility. On appeal, the Applicant agrees that he is inadmissible for providing material support to a terrorist organization, but he asserts that he has requested a waiver of that ground of inadmissibility from State Department. The Petitioner correctly asserts on appeal that a waiver for inadmissibility under section 212(a)(3)(B) of the Act exists: “The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security . . . may determine in such Secretary’s sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection.” Section 212(d)(3)(B)(i) of the Act. Although a noncitizen who is inadmissible under subsection 212(a)(3)(B)(i)(II) of the Act or certain other subsections is ineligible for such a waiver, section 212(d)(3)(B)(i) of the Act does not exclude noncitizens specifically inadmissible under subsection 212(a)(3)(B)(i)(I) of the Act from eligibility for that waiver. Accordingly, the Director erred in stating that “There is no waiver for inadmissibility under section INA [*sic*] 212(a)(3)(B)(i)(I).” Because the Director denied the Form I-601 on this basis, we will remand the matter for the Director to further review the merits of the Applicant’s Form I-601, Application for Waiver of Grounds of Inadmissibility.

B. Unlawful Presence under Section 212(a)(9)(B)(i)(II) of the Act

As noted above, the Director found the Applicant inadmissible for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act. The Director did not analyze the hardship factors related to the Applicant's waiver application. On appeal, the Applicant agrees that he is inadmissible for unlawful presence but asserts that refusal of admission would result in extreme hardship to his U.S. citizen spouse. On remand, the Director should further review the merits of the Applicant's Form I-601.

C. Fraud or Willful Misrepresentation of a Material Fact under Section 212(a)(6)(C) of the Act

As noted above, the Director found the Applicant inadmissible under section 212(a)(6)(C) of the Act. On appeal, the Applicant denies that he is inadmissible for fraud or misrepresentation of a material fact in order to obtain an immigration benefit because he revealed his true identity to immigration officers when the government still had the opportunity to deny him entry into the United States.¹ On remand, the Director should further review the merits of the Applicant's Form I-601.

We note that Department of Homeland Security records establish that, "[o]n or around [redacted] 1996, [the Applicant] attempted to enter the United States at [redacted] New York with another individual's passport." U.S. Department of Justice records indicate that the Applicant was placed in exclusion proceedings in 1996 with charges of four violations of the Act in connection with his attempt to enter the United States with another individual's passport, specifically including a violation of section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). Moreover, the record contains an Immigration Judge's order of exclusion, dated [redacted] 1997, specifically stating that the Applicant has been ordered excluded and deported from the United States based on a violation of section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

We also note that the regulation at 8 C.F.R. § 103.2(a)(1) incorporates benefit requests' form instructions into the regulations requiring their submission. The Form I-601 filing instructions specifically state:

If this Form I-601 is approved, the waiver that is granted will apply only to the grounds of inadmissibility and those crimes, incidents, events, or conditions that you have included in your application. For this reason, it is important that you disclose all conduct or conditions that may cause you to be inadmissible and list all grounds of inadmissibility for which you seek a waiver.

On the Form I-601, the Applicant indicated that he is inadmissible because of—and seeks a waiver for—being “subject to the 3-year or the 10-year bar to admissibility because I was previously unlawfully present in the United States in excess of either 180 days or one year or more, respectively, and subsequently departed the United States.” The Applicant did not indicate on the Form I-601 that he is inadmissible because of—and seeks a waiver for—having violated section 212(a)(6)(C)(i) of the

¹ As a defense to inadmissibility for fraud or willful misrepresentation, a person may show that he or she timely retracted or recanted the false statement. The effect of a timely retraction is that the misrepresentation is eliminated as if it had never happened. See *Matter of R-R*, 3 I&N Dec. 823 (BIA 1949). If a person timely retracts the statement, the person is not inadmissible for fraud or willful misrepresentation. See 8 USCIS Policy Manual J.3(D)(6), <https://www.uscis.gov/policymanual>.

Act. Based on these facts, the Director should address on remand whether the Applicant would remain inadmissible for fraud or willful misrepresentation of a material fact.

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