



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

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

In Re: 10319129

Date: SEP. 07, 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 immigrant visa and seeks a waiver of inadmissibility under section 212(d)(11) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(d)(11).

The Director of the Nebraska Service Center denied the application, noting that in addition to being inadmissible for alien smuggling under section 212(a)(6)(E)(i) of the Act, the Applicant was found inadmissible by a U.S. Department of State (DOS) consular officer as a foreign national likely to become a public charge under section 212(a)(4)(A) of the Act,¹ for which no waiver is available. The Director concluded that because the Applicant would remain inadmissible under section 212(a)(4)(A) of the Act even if a waiver is granted, his waiver would be denied as a matter of discretion.

On appeal, the Applicant argues that the Director erred in failing to consider his waiver application. 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.

The Director relied on the decision in *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg'l Comm'r 1963), in determining that because the Applicant was also inadmissible as an individual likely to become a public charge, a ground for which no waiver was available, no purpose would be served in granting the waiver application. *Matter of J-F-D-* involved the denial of an application for permission to reapply for admission after deportation because the applicant could not overcome his inadmissibility for a crime involving moral turpitude, a ground for which no waiver was available at the time. Unlike non-waivable grounds of inadmissibility such as those based on certain criminal convictions or immigration violations, an initial public charge finding may be overcome during the processing of an immigrant visa application. For example, an applicant may submit additional evidence to DOS, such as updated financial documentation or an affidavit of support from a new sponsor. We therefore find it appropriate to remand the matter to the Director to adjudicate the waiver application under section 212(d)(11) of the Act on its merits rather than denying it solely based on the public charge finding.

¹ Under section 212(a)(4) of the Act, an individual seeking admission to the United States is inadmissible if the individual at the time of application for admission or adjustment of status, is likely at any time to become a public charge.

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