



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

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

In Re: 28718560

Date: NOV. 28, 2023

Appeal of San Bernardino, California Field Office Decision

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

The Applicant, a native and citizen of the People's Republic of China, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and engaging in prostitution. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i) and section 212(a)(2)(D)(i), 8 U.S.C. § 1182(a)(2)(D). The Applicant does not contest these inadmissibility determinations.

The Director of the San Bernardino, California Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant's statement in support of the waiver application did not establish extreme hardship to her qualifying relative. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant asserts that the Director did not consider the evidence submitted in support of the waiver application.

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 remand the matter to the Director for further proceedings.

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. This ground of inadmissibility may be waived as a matter of discretion 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.

Any noncitizen who is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status, is inadmissible. Section 212(a)(2)(D)(i) of the Act.

Noncitizens found inadmissible under section 212(a)(2)(D)(i) of the Act for engaging in prostitution may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. A waiver is available if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the noncitizen has been rehabilitated. Section 212(h)(1)(A) of the Act. A waiver is also available if denial of admission would result in extreme hardship to a U.S. citizen or LPR spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

In denying the waiver application, the Director acknowledged the Applicant's statement submitted in support of the waiver and that her U.S. citizen spouse is the qualifying relative who would experience extreme hardship if the Applicant were not admitted. However, upon review of the decision and as the Applicant correctly asserts, the Director did not analyze or consider all the evidence of hardship submitted in support of the waiver application.

As it relates to extreme hardship evidence, the Applicant submitted into the record before the Director birth certificates for her spouse and in-laws, verification of employment for the Applicant and her spouse, medical records for her in-laws and their statements in support of the Applicant, proof of home ownership, a psychological evaluation, copies of taxes, and family photos. The decision does not reflect that the Director reviewed or considered this evidence. As such, we will withdraw the Director's decision and remand the matter for consideration of all the evidence in the first instance and the issuance of a new decision on the waiver application.

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