



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

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

In Re: 29176154

Date: NOV. 29, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i) to waive inadmissibility under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The Director of the Nebraska Service Center denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility. The matter is now before us on appeal. 8 C.F.R. § 103.3. 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 dismiss the appeal.

Generally, an applicant for an immigration visa or adjustment of status may apply for a waiver if it is available under section 212 of the Act. 8 C.F.R. § 212.7(a)(1). Any waiver, including those submitted through the Form I-601, must be submitted in accordance with the form's instructions, which carry the force of regulation. *See id.*; 8 C.F.R. § 103.2(a). The Form I-601 instructions at the time the Applicant filed his Form I-601 described which immigration benefits allowed for a waiver of certain grounds of inadmissibility and included the requirement that one be an applicant for an immigrant, K, or V nonimmigrant visa, or for certain categories of adjustment of status to lawful permanent residence. *See* USCIS, OMB No. 1615-0029, *Instructions for Application for Waiver of Grounds of Inadmissibility* (Jan. 27, 2020).¹

The record shows that the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, in 2017. This application, however, was denied in April 2020 after it was deemed abandoned for failing to provide requested evidence. The Applicant filed the Form I-601 in July 2021, which as stated above, was denied by the Director after concluding the Applicant was seeking an immigrant visa abroad but had not yet been interviewed and found inadmissible by a consular officer and therefore his waiver application could not be adjudicated.² On appeal the Applicant claims the

¹ We recognize that there may be circumstances where one need not concurrently submit an application for adjustment of status to lawful permanent resident with their Form I-601. *See, e.g., Matter of Abosi*, 24 I&N Dec. 204 (BIA 2007) (finding that a lawful permanent resident who sought to return to the United States after a trip abroad did not need to apply for adjustment of status in conjunction with his request for a waiver of inadmissibility under section 212(h) of the Act). These circumstances, however, do not apply to the respondent.

² The Applicant submitted a Form I-601 in November 2020 as well, which was denied by the Director in February 2021, but that Form I-601 is not the subject of this appeal.

Director erred in denying his Form I-601 because he had not sought an immigrant visa abroad and instead was seeking a waiver in conjunction with a Form I-485. He further claims that if U.S. Citizenship and Immigration Services (USCIS) had forwarded his file to the Department of State that it was in error and therefore his Form I-601 should be reopened for further processing.

The record does not reflect that the Applicant is seeking an immigrant visa abroad, as the Director maintained. However, the Director did not err in denying this waiver application. The Applicant's 2017 Form I-485 was denied in 2020, and he did not file his Form I-601 until over a year later. Additionally, the record does not establish that the Applicant filed a motion to reopen or reconsider the denial of his Form I-485 or that he was the beneficiary of any other pending application for an immigrant, K, or V nonimmigrant visa, or for adjustment of status to lawful permanent residence at the time he filed his Form I-601. As the Applicant was found ineligible to adjust status on a basis unrelated to his inadmissibility and waiver application, and he no longer has a pending, underlying adjustment of status application, no purpose would be served in adjudicating his waiver application and we will dismiss his appeal.

ORDER: The appeal is dismissed.