



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

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

In Re: 28102143

Date: OCT. 2, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Peru, has applied for an immigrant visa. 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 seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Nebraska Service Center denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish that she was eligible to apply for a waiver because her underlying Form I-130, Petition for Alien Relative (visa petition), was revoked and absent an approved visa petition, the Applicant could not establish that she is within the class of individuals eligible to apply for a waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant argues that because a motion to reconsider the decision revoking the visa petition was pending at the time, the Director erred in denying her 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 dismiss the appeal.

The Applicant married a U.S. citizen who in 2002 filed a visa petition on her behalf. USCIS initially approved the petition in 2004, but subsequently revoked it after determining that the marriage was entered into for the purpose of evading immigration laws. As a result, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking an immigration benefit through fraud or misrepresentation and requires a waiver of inadmissibility. The Applicant does not contest the finding of inadmissibility.

In 2015, the Applicant’s current spouse filed a visa petition on her behalf. USCIS approved the petition in 2016. The U.S. Department of State returned the visa petition to USCIS in 2017 because

of the prior finding of inadmissibility and advised the Applicant she could seek a waiver. In 2019, the Applicant filed the instant waiver application. In June 2022, USCIS revoked the visa petition after notice, and the Applicant filed a timely motion to reconsider the revocation. While the motion to reconsider was pending, the Director denied the waiver application, concluding there was no longer a pending visa petition.<sup>1</sup> The Applicant filed this timely appeal, arguing that the Director erred in denying her waiver application while a motion was pending on the revocation of her visa petition.<sup>2</sup>

A waiver application serves the purpose of removing the inadmissibility bar to adjustment of status or issuance of an immigrant visa, *See* 8 C.F.R. § 212.7(a)(1). To be eligible to receive a waiver, the applicant must first be “an applicant for an immigrant, K, or V nonimmigrant visa [. . .], or . . . an applicant for adjustment of status to lawful permanent residence,” excluding certain identified categories. *See* Form I-601 Instructions for Application of Waiver of Grounds of Inadmissibility,<sup>3</sup> <https://www.uscis.gov/sites/default/files/document/forms/i-601instr.pdf>. In this case, the Applicant has not established she is within any of these categories; thus, she is not eligible to apply for a waiver as the Director concluded. Therefore, we will not reach the merits of the Applicant’s waiver or consider whether it should be granted as a matter of discretion. The waiver application will remain denied.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> Records do not indicate that a new Form I-130 has been filed or approved on the Applicant’s behalf.

<sup>2</sup> During the pendency of the instant appeal, the Director dismissed the motion to reconsider the denial of the visa petition.

<sup>3</sup> Form instructions carry the weight of binding regulations. *See* 8 C.F.R. § 103.2(a)(1) (“Every form, benefit request, or document must be submitted . . . and executed in accordance with the form instructions. . . . The form’s instructions are hereby incorporated into the regulations requiring its submission.”).