



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

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

MATTER OF A-B-

DATE: SEPT. 4, 2015

APPEAL OF NEW YORK DISTRICT OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Jamaica, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(i), 8 U.S.C. § 1182(i). The District Director, New York, New York, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission (adjustment of status) to the United States by fraud or willful misrepresentation. The Applicant's spouse is a U.S. citizen. The Applicant seeks a waiver of inadmissibility in order to reside in the United States.

The Director found that the Applicant did not establish that he is eligible to adjust his status to that of a lawful permanent resident under section 245(a) of the Act and she states that the Applicant was not admitted or paroled into the United States. The Director did not find that the Applicant is eligible to adjust his status under section 245(i) of the Act. The record does not include evidence that the Applicant has a petition or an application for a labor certification filed on his behalf on or before April 30, 2001. The Director found that the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, is not supported by any evidence of eligibility for adjustment of status and denied the Form I-485 accordingly. Nonetheless, the Director evaluated the Applicant's hardship claim and concluded that the Applicant did not establish extreme hardship to a qualifying relative and he is not eligible for a waiver as a matter of discretion. The Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserts that his spouse would experience extreme hardship if his waiver application is denied.

The record includes, but is not limited to, counsel's brief, statements from the Applicant and his spouse, a psychological evaluation, documents for the Applicant's spouse's child, immigration records, and criminal records. The entire record was reviewed and considered in rendering a decision on the appeal.

A Form I-601 waiver application is viable when there is a pending adjustment of status application or immigrant visa application. In this case, the Applicant's Form I-485 was denied on October 21, 2014. As described above, the Director found the Applicant did not establish his eligibility to adjust his status to that of a lawful permanent resident under section 245(a) of the Act or section 245(i) of the Act. The Applicant has filed a motion to reopen the denial of his Form I-485, but the record lacks evidence showing that the Director has changed her finding.

Because the Applicant was found ineligible to adjust status for reasons other than his inadmissibility under section 212(a)(6)(C)(i) of the Act, no purpose would be served in examining the hardship to the Applicant's spouse. Accordingly, the waiver application is dismissed as a matter of discretion.

In application proceedings it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-B-*, ID# 12351 (AAO Sept. 4, 2015)