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

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

MATTER OF J-E-J-

DATE: SEPT. 21, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

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

The Applicant states that he is inadmissible to the United States as a result of two or more criminal convictions for which the combined sentences to confinement were five years or more. Section 212(a)(2)(B), 8 U.S.C. § 1182(a)(2)(B). The Applicant seeks a waiver of inadmissibility under section 212(h) of the Act.

The Director, in a decision dated December 5, 2014, concluded that the Applicant was not eligible to file a Form I-601, Application for Waiver of Grounds of Inadmissibility, as the Applicant is not an applicant for an immigrant visa, and denied the application accordingly. The Director noted that the Form I-601 instructions indicate that the Form I-601 may be filed from outside of the United States by those individuals seeking an immigrant visa, a K nonimmigrant visa, or a V nonimmigrant visa.

On appeal, the Applicant states that the Director erred in his denial decision, as a consular officer at the U.S. Consulate in [REDACTED] Canada, interviewed the Applicant and instructed him that he was ineligible to receive a B1/B2 visa but was eligible to apply for a waiver.

The record includes, but is not limited to documents establishing the Applicant's identity, a letter from the Applicant, documentation that the Applicant received from the U.S. Consulate in [REDACTED] Canada, and the Applicant's criminal records. The entire record was reviewed and considered in rendering this decision.

A Form I-601 may be filed by immigrant visa applicants who are outside the United States, who have had a visa interview with a U.S. consular officer, and who have been found to be inadmissible. *Instructions for Form I-601, Application for Waiver of Grounds of Inadmissibility*, available at <http://www.uscis.gov/i-601>. The regulations require that form instructions be followed. 8 C.F.R. § 212.7(a)(1). The Director, in a request for evidence, asked the Applicant to submit evidence to show that he was eligible to file Form I-601. In response, the Applicant submitted a copy of the Form OF-194, Refusal Worksheet, that he received from the U.S. Consulate in [REDACTED] Canada,

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dated April 17, 2013, which indicates that the Applicant was refused a B1/B2 nonimmigrant visa based on section 212(a)(1) of the Act and that he is eligible to file for a waiver of the “ground(s) of ineligibility.”<sup>1</sup>

The record indicates that the Applicant was ordered deported from the United States on [REDACTED], 1988. The record further indicates that on [REDACTED] 1987, the Applicant was convicted in the Circuit Court, [REDACTED] in and for [REDACTED] Florida, of burglary (structure) in the third degree, in violation of Florida Statutes § 810.02(i)(3) and petty theft, in violation of Florida Statutes § 812.014(i).

The Applicant states that he is seeking a nonimmigrant B1/B2 visa to visit family temporarily in the United States. A Form I-601, however, is not the correct application for a waiver of inadmissibility in connection with a B1/B2 visitor visa. The record does not show that the Applicant is eligible to file Form I-601, and Director correctly denied that application. Should the Applicant wish to file for a waiver in connection with his B1/B2 visa application, the Applicant should contact the U.S. Consulate for further instructions.

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 J-E-J-*, ID# 13278 (AAO Sept. 21, 2015)

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<sup>1</sup> Section 212(a)(1) of the Act addresses health-related grounds of inadmissibility. Aside from the OF-194, however, there is no indication in the record that the Applicant is inadmissible under section 212(a)(1) of the Act.