



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

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

MATTER OF V-P-M-S-

DATE: APR. 11, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of the ground of inadmissibility for a controlled substance violation. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver because the activities for which the foreign national is inadmissible occurred 15 years prior, if the foreign national's admission would not be contrary to the national welfare, safety, or security of the United States and the foreign national has been rehabilitated.

The Director, Nebraska Service Center, denied the Applicant's waiver application because USCIS was unable to verify that the Applicant had a consular interview to determine her eligibility for an immigrant visa. The Director further explained that the Applicant was required to file an immigrant visa application and have a consular interview before she was eligible to file a Form I-601, Application for Waiver of Grounds of Inadmissibility. As such, her waiver was denied as a matter of law for failing to show she was eligible to file the Form I-601.

The matter is now before us on appeal. In the appeal, the Applicant submits evidence in support of her claim that, although she was ordered removed in 1998 after being found inadmissible under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), as a controlled substance trafficker, she did not knowingly transport a controlled substance.

Upon *de novo* review, we will dismiss the appeal.¹

¹ The Applicant indicated in her Form I-290B, Notice of Appeal or Motion, that she was appealing the decisions related to Forms I-601 and I-212. The Director denied her Forms I-601 and I-212 in separate decisions, and the Applicant was required to file another Form I-290B to appeal the denial of the Form I-212. However, the Applicant was removed from the United States in 1998 and has remained outside the United States since that date. The Applicant was inadmissible under section 212(a)(9)(A)(ii) of the Act for a period of 10 years, but more than 10 years have passed since her removal, and it thus appears that the Applicant is no longer inadmissible under section 212(a)(9)(A)(ii) and does not require permission to reapply for admission into the United States after removal.

(b)(6)

Matter of V-P-M-S-

I. LAW

The Applicant was found inadmissible under section 212(a)(2)(C) of the Act and was ordered removed on [REDACTED] 1998. Section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), provides, in pertinent part:

Any alien who the consular officer or the Attorney General knows or has reason to believe—

- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . . is inadmissible.

The Applicant seeks a waiver of her inadmissibility under section 212(h) of the Act, which provides that inadmissibility under section 212(a)(2)(A)(i)(II) of the Act for a violation of a law relating to a controlled substance may be waived under certain circumstances.²

II. ANALYSIS

The issue in this case is whether the Director properly denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, because she had not demonstrated she had been interviewed by a consular officer as an individual seeking an immigrant visa and been found inadmissible. On appeal, the Applicant concedes that she was not interviewed by a consular officer. Further, the Applicant indicates that she was charged with driving a vehicle found to contain seven pounds of Marijuana, but she states that she is not guilty of these charges and provides documents demonstrating that the criminal charges against her were dismissed. The record does not indicate that the Applicant has applied for an immigrant visa and been found inadmissible by a consular officer, and she is therefore not eligible to apply for a waiver of inadmissibility at this time. Because she has not yet been found inadmissible by a consular officer, her Form I-601 was premature, and we will not address whether she requires a waiver of inadmissibility under section 212(h) of the Act, and if so, whether she has established eligibility for a waiver.

The record reflects that the Applicant became a Lawful Permanent Resident (LPR) in December 1990. On [REDACTED] 1998, when she attempted to enter the United States from Mexico as a returning LPR, she was apprehended driving a vehicle containing seven pounds of Marijuana. She

² Pursuant to section 212(h) of the Act, a discretionary waiver may be granted for a controlled substance violation relating to a single offense of simple possession of 30 grams or less of marijuana. There is no waiver, however, for inadmissibility under section 212(a)(2)(C) of the Act for having been an illicit trafficker in a controlled substance.

(b)(6)

Matter of V-P-M-S-

was charged with inadmissibility under section 212(a)(2)(C) of the Act and placed in removal proceedings, and on [REDACTED] 1998, she was ordered removed. Her U.S. citizen son filed a Petition for Alien Relative, Form I-130, which was approved on May 6, 2014. The Applicant has not yet applied for an immigrant visa, and the Applicant states that her attorney advised her to file the Form I-601 and Form I-212, Permission to Reapply for Admission into the United States, in June 2014.

The Form I-601 instructions state that an individual residing outside the United States must have previously had an immigrant visa interview with a consular officer and been found inadmissible before filing the Form I-601. Regulations require that form instructions be followed. *See* 8 C.F.R. § 212.7(a)(1). The Applicant is required to file an application for an immigrant visa and to attend a consular interview before filing the Form I-601. As such, until the Applicant applies for an immigrant visa and is found inadmissible after an interview with a consular officer, the Form I-601 cannot be considered.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of V-P-M-S-*, ID# 15994 (AAO Apr. 11, 2016)