



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

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

MATTER OF G-R-C-

DATE: DEC. 2, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Ecuador, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Newark, New Jersey, denied the application. The matter is now before us on appeal. The matter will be remanded to the Field Office Director, Newark Field Office, for further proceedings consistent with the foregoing opinion.

The Director found that the Applicant does not have a qualifying relative and therefore is ineligible for relief. The Director denied the Form I-601 accordingly.

On appeal, the Applicant asserts that he is eligible for a waiver as a surviving relative pursuant to section 204(l) of the Act; he is eligible for humanitarian reinstatement pursuant to 8 CFR § 205.1(a)(3)(i)(C); and he is eligible for a fraud waiver pursuant to section 237(a)(1)(H) of the Act. In support, the Applicant submits the following: a brief, a USCIS policy memorandum regarding section 204(l) of the Act, employment documentation, certificates issued to the Applicant's son, a newspaper article, and copies of family photographs. The entire record was reviewed and considered in arriving at a decision on appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the

(b)(6)

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[Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the Applicant was a derivative beneficiary of a Form I-130, Petition for Alien Relative, filed by his spouse's U.S. citizen father in December 1999, and approved on March 9, 2005. The record reflects that the Applicant procured entry to the United States on March 30, 2005 using a fraudulent B-2 visa. The Applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on January 11, 2008 based on the above-referenced Form I-130 approval. The Applicant's status was adjusted to that of a lawful permanent resident on or about July 22, 2008.

The record further establishes that his spouse's father, the petitioner of the Form I-130 approved on his spouse's behalf in March 2005, died on [REDACTED] 2010. On July 21, 2012, the Applicant sought admission into the United States. The Applicant was paroled into the United States for the purpose of deferred inspection proceedings.

On April 29, 2013, the Applicant was issued a Notice of Intent to Rescind Adjustment of Status. In the Notice, the USICS determined that the Applicant's spouse, the principal beneficiary of the Form I-130 approval bestowing the Applicant with derivative status, was not present in the United States on December 21, 2000 as required under section 245(i) of the Act. The USCIS further noted that the Applicant was inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, as a result of his March 2005 entry using a fraudulent B-2 visa referenced above, for which no waiver had been obtained. The Applicant was given thirty days to respond with reasons for why his adjustment of status should not be rescinded. The Applicant's Form I-485 approval was subsequently rescinded on July 1, 2013. In May 2013, the Applicant filed another Form I-485 that was denied on January 28, 2015.

The record establishes that the Applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States in March 2005, and adjustment of status in July 2008, by fraud or willful misrepresentation. The Applicant does not contest his inadmissibility on appeal.

We remand the matter to the Director to determine whether the Applicant is ineligible to adjust status for the reason articulated above. If the Director determines that such is the case and issues a new decision that includes this additional ground as an alternative basis for denying the adjustment application, the Applicant's application for a waiver of inadmissibility will be moot, as this additional ground for denial is not waivable. If the Director determines that no additional grounds of ineligibility apply, the Director will return the Applicant's Form I-601 appeal to us for further review.

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ORDER: The matter is remanded to the Field Office Director, Newark Field Office, for further proceedings consistent with the foregoing opinion.

Cite as *Matter of G-R-C-*, ID# 13778 (AAO Dec. 2, 2015)