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

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

MATTER OF R-R-R-

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 the Philippines, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. 1182(i). The Director, Nebraska Service Center, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by fraud or willful misrepresentation of a material fact and pursuant to section 212(a)(3)(B) of the Act, 8 U.S.C. § 1182(a)(3)(B), for terrorist activities.

The Applicant's spouse is a U.S. citizen, and the Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative filed by his spouse. No waiver is available for a ground of inadmissibility under section 212(a)(3)(B) of the Act. The Applicant has, however, filed a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to waive his inadmissibility under section 212(a)(6)(C)(i) of the Act and to reside in the United States with his U.S. citizen spouse and family.

The Director determined that due to the Applicant's inadmissibility under section 212(a)(3)(B) of the Act, the Applicant would remain inadmissible even if a waiver were granted pursuant to section 212(i) of the Act. The Director found that the Applicant's remaining inadmissibility supported denial of the Form I-601, and the application was denied accordingly. *See Decision of Director*, dated September 25, 2014

On appeal, the Applicant contests his inadmissibility under section 212(a)(3)(B) of the Act. He indicates that, although he claimed on an asylum application that he was involved with the [REDACTED] in the Philippines, the asylum office did not believe his asylum claim and questioned his credibility in a notice of intent to deny letter sent to him in 1994. He also asserts that he admitted to U.S. consular officers in [REDACTED] that his asylum claim was false and that he never

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joined or belonged to the NPA, and he indicates that the finding that he belonged to the [REDACTED] is therefore erroneous and should be reversed.¹ With regard to his waiver application under section 212(i) of the Act, the Applicant asserts that evidence in the record demonstrates that his spouse will experience extreme hardship if he is denied admission into the United States.

In support of the Applicant's claims the record includes, but is not limited to, documentation related to the Applicant's asylum application; letters from friends and from the Applicant's spouse; medical and school records; photographs and country conditions information; and documents pertaining to travel, identity and immigration status. The entire record was reviewed and considered in arriving at a decision on the 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.
- (iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i)(1) of the Act provides, in pertinent part, that:

The Attorney General [now Secretary, 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 immigrant 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 [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.

Section 212(a)(3)(B) of the Act provides, in pertinent part:

(B) Terrorist activities

(i) In general Any alien who—

¹ The record does not reflect the specific provision under section 212(a)(3)(B) of the Act for which the consular officer found the Applicant to be inadmissible. The decision of the Director states that the Applicant admitted to being a member of the [REDACTED] in the Philippines and indicates that he is "inadmissible for terrorist activities" under section 212(a)(3)(B) of the Act. We note, however, that a March 21, 2002, Immigration and Naturalization Service decision denied the Applicant's Form I-212 and Form I-601 based on inadmissibility under section 212(a)(3)(B)(i)(V) of the Act (for membership in a terrorist organization).

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(I) has engaged in a terrorist activity;
(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));
(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;
(IV) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or
(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);
(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;
(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;
(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or
(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years,

is inadmissible. . . .

There is no waiver available for a ground of inadmissibility under section 212(a)(3)(B) of the Act. Although the Applicant may seek a waiver for his inadmissibility under section 212(a)(6)(C)(i) of the Act by establishing extreme hardship to a qualifying relative, no purpose is served in granting that waiver where the Applicant would remain inadmissible under another provision of the Act. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964); *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg'l Comm'r 1963).

The Applicant asserts on appeal that he should not be found inadmissible under section 212(a)(3)(B) of the Act. However, evidence contained in the record demonstrates that he repeatedly stated that he was involved with the [REDACTED] for five years in the Philippines.² The record reflects that the Applicant

² The term, "terrorist organization" is defined at section 212(a)(3)(B)(vi) of the Act. The [REDACTED] was originally designated as a Foreign Terrorist Organization on August 9, 2002.

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stated in the Form I-589, Request for Asylum in the United States, filed in September 1994, that he was “involved with an organization called [REDACTED] for five years.” He stated in the Form I-589 that he “participated and dedicated” himself to the [REDACTED] for five years, that he was arrested due to his involvement with the [REDACTED] and that the [REDACTED] arranged for his escape from the country with a false passport. The Applicant signed the Form I-589 on July 21, 1994. He signed the Form I-589 a second time after he was interviewed by an asylum officer on November 29, 1994. In signing the application, the Applicant attested each time, under penalty of perjury, that all declarations made in the Form I-589 were true and correct to the best of his knowledge.

On appeal, the Applicant claims that an inadmissibility finding under section 212(a)(3)(B) of the Act is erroneous because the asylum office did not believe his [REDACTED] related assertions and questioned his credibility in the notice of intent to deny letter sent to him in 1994.

The December 6, 1994, notice of intent to deny stated that the testimony given by the Applicant during his asylum interview was not found to be credible due to a lack of significant and material details concerning his involvement with the [REDACTED] and the asylum office concluded that due to the lack of credible detail in his case, it was not possible to determine if the Applicant was persecuted or had a well-founded fear of persecution in the future. In the Applicant’s response to the notice of intent to deny, he indicated that it was impossible to explain every incident he experienced “in just a few pages or even in just a few minutes of interviewing,” and he reasserted that he was involved with the [REDACTED] for five years. He added that he was assigned tasks as an [REDACTED] member, that he attended [REDACTED] meetings, and that “over the five years” he earned the trust of the [REDACTED] and “was ranked in a higher level but not to the top.”

The asylum denial decision states that the information provided by the Applicant in his rebuttal letter failed to overcome the basis of denial as set forth in the notice of intent to deny, but does not specify that his claim of membership in the [REDACTED] was found to be not credible. *See denial letter from Director of the Los Angeles Asylum Office*, dated August 8, 1995. Further, the Applicant claimed throughout the asylum process, including on his asylum application and during his asylum interview, that he was an [REDACTED] member for five years in the Philippines. He repeated this claim in response to the notice of intent to deny his asylum application, explaining further that during his five years as a member of the [REDACTED] he attended meetings, was assigned tasks and earned a higher rank within the organization.

After applying for an immigrant visa and being found inadmissible for his claimed past membership in the [REDACTED], the Applicant stated that he never belonged to the [REDACTED]. Upon review of the cumulative evidence on the record, including the Applicant’s repeated statements in support of his asylum application that he was a member of the [REDACTED] he has not established that he is not inadmissible under section 212(a)(3)(B) of the Act. There is no waiver available for inadmissibility under section 212(a)(3)(B) of the Act, and therefore no purpose would be served in determining whether the Applicant is eligible for a waiver under section 212(i) of the Act for having procured admission into the United States by fraud or willful misrepresentation.

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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. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of R-R-R-*, ID# 15310 (AAO Sept. 21, 2015)