



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

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

MATTER OF I-S-G-

DATE: JAN. 5, 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 inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Director found that the Applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for having attempted to procure admission to the United States through fraud or misrepresentation. The Applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act.

In a decision dated April 7, 2015, the Director determined that the Applicant was ineligible for a waiver of inadmissibility because he had not established that he had a qualifying relative for purposes of a waiver under section 212(i) of the Act. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, the Applicant asserts that his now-deceased spouse is a qualifying relative for purposes of section 212(i) of the Act. With the appeal, the Applicant submits a brief. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act states:

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.

The record establishes that, on May 3, 1999, the Applicant presented a fraudulent U.S. nonimmigrant visa in an attempt to procure admission to the United States. He was subsequently removed from the United States on June 28, 1999. The Applicant does not contest the Director's finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to remain in the United States with his children.

Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1), provides that section 212(a)(6)(C)(i) inadmissibility may be waived as a matter of discretion for

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 . . . that the refusal of admission . . . would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien, or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. As noted above, the Director determined that the Applicant had not established that he had a qualifying relative as required under section 212(i) of the Act. The Applicant asserts that his now-deceased spouse is still a qualifying relative.

Section 204(l) of the Act states:

1) Surviving Relative Consideration for Certain Petitions and Applications-

(1) IN GENERAL- An alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States shall have such petition described in paragraph (2), or an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship described in paragraph (2), and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest.

(2) ALIEN DESCRIBED- An alien described in this paragraph is an alien who, immediately prior to the death of his or her qualifying relative, was--

- (A) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 201(b)(2)(A)(i));
- (B) the beneficiary of a pending or approved petition for classification under section 203 (a) or (d);
- (C) a derivative beneficiary of a pending or approved petition for classification under section 203(b) (as described in section 203(d));

- (D) the beneficiary of a pending or approved refugee/asylee relative petition under section 207 or 208;
- (E) an alien admitted in 'T' nonimmigrant status as described in section 101(a)(15)(T)(ii) or in 'U' nonimmigrant status as described in section 01(a)(15)(U)(ii); or
- (F) an asylee (as described in section 208(b)(3)).

A "qualifying relative" means an individual who, immediately before death was:

. . . The petitioner in an immediate relative or family-based immigrant visa petition under section 201(b)(2)(A)(i) or 203(a) of the Act. . . .

USCIS Policy Memorandum PM-602-0017, *Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act* 5 (Dec. 16, 2010), <http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/January/Death-of-Qualifying-Relative.pdf>

The record establishes that the Applicant is the beneficiary of the Form I-130, Petition for Alien Relative, filed by his daughter on February 10, 2009 and approved on March 13, 2009. However, as indicated above, relief under section 204(l) of the Act requires that the deceased qualifying relative be the petitioner of the family-based immigrant visa petition. Because the Applicant's spouse was not the petitioner of the Form I-130 approved on the Applicant's behalf, the Applicant does not meet the definition of a surviving relative pursuant to section 204(l) of the Act.¹

The record does not indicate that the Applicant is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence. Accordingly, he has not established that he has a qualifying relative for the purposes of a waiver of grounds of inadmissibility under section 212(i) of the Act

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.

¹ We note that even if the Applicant's now-deceased spouse had been the petitioner of the Form I-130 on the Applicant's behalf, which is not the case here, the Applicant would not qualify for relief under section 204(l) of the Act as the record establishes that he was not residing in the United States when his spouse died, nor does he reside in the United States at this time.

Matter of I-S-G-

ORDER: The appeal is dismissed.

Cite as *Matter of I-S-G-*, ID# 15034 (AAO Jan. 5, 2016)