



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

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

MATTER OF A-K-J-

DATE: MAY 2, 2016

APPEAL OF SPOKANE, WASHINGTON FIELD OFFICE DECISION

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

The Applicant, a native and citizen of India, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust to lawful permanent resident (LPR) status must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Field Office Director, Spokane, Washington, denied the application. The Director found the Applicant inadmissible for misrepresentation pursuant to section 212(a)(6)(C)(i) of the Act. The Director further noted that as the Applicant had abandoned her application for adjustment of status for failing to appear for scheduled interviews, her application was summarily denied and thus, no purpose would be served in evaluating the assertions to hardship to the Applicant's spouse.

The matter is now before us on appeal.<sup>1</sup> In the appeal, the Applicant submits additional evidence and states that she is not inadmissible for fraud or misrepresentation and that she did not abandon her application but never received the interview notices from USCIS.

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

I. LAW

The Applicant is seeking to adjust status to LPR status and has been found inadmissible for a fraud or misrepresentation. Specifically, the record establishes that on or about July 22, 2013, when attempting to procure entry to the United States as a nonimmigrant, the Applicant misrepresented her

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<sup>1</sup> The Applicant indicates in her Form I-290B, Notice of Appeal or Motion, that she is appealing the decisions related to the Forms I-601 and I-485. However, we do not have jurisdiction to review the Form I-485 in this case. The authority to adjudicate appeals is delegated to us by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). We exercise appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

intentions. The record indicates that when asked by border officials what she was going to be doing in the United States as a visitor, the Applicant stated that she was going to meet her aunt, when in reality, as she states in her sworn testimony of March 5, 2014, her intention was to be with her U.S. citizen spouse in the United States.

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.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides, in pertinent part:

(1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 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.

## II. ANALYSIS

The primary issue in this case is whether the Director properly denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, based on the finding that her application had been abandoned for failure to appear for scheduled interviews. On appeal, the Applicant concedes that she did not attend the interviews but indicates that she did not receive the notices. Further, the Applicant states that her past actions demonstrate that she would have appeared, and that normally additional interviews are not scheduled.

8 C.F.R. § 103.2(b)(13) states in pertinent part:

*Effect of failure to respond to a request for evidence or a notice of intent to deny or to appear for interview or biometrics capture—(i) Failure to submit evidence or respond to a notice of intent to deny.* If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons. If other requested material necessary to the processing and approval of a case, such as photographs, are not submitted by the required date, the application may be summarily denied as abandoned.

(ii) *Failure to appear for biometrics capture, interview or other required in-person process.* Except as provided in 8 CFR 335.6, if USCIS requires an individual to appear for biometrics capture, an interview, or other required in-person process but the person does not appear, the benefit request shall be considered abandoned and denied unless by the appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear.

8 C.F.R. § 103.2(b)(15) states:

*Effect of withdrawal or denial due to abandonment.* The USCIS acknowledgement of a withdrawal may not be appealed. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under §103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new benefit request with a new fee. However, the priority or processing date of a withdrawn or abandoned benefit request may not be applied to a later application petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior benefit request shall otherwise be material to the new benefit request.

The record establishes that the Applicant's Form I-601 was denied due to abandonment pursuant to 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed. *See* 8 C.F.R. § 103.2(b)(15). Accordingly, the instant appeal will be dismissed.

### 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 A-K-J-*, ID# 16074 (AAO May 2, 2016)