



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

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

MATTER OF V-M-M-

DATE: SEPT. 8, 2016

APPEAL OF DALLAS FIELD OFFICE DECISION

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

The Applicant, a native of El Salvador and citizen of Canada, 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 status to that of a lawful permanent resident 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 Dallas Field Office Director, Irvine, Texas, denied the application. The Director concluded that the Applicant is ineligible for adjustment of status under section 245(c) of the Act, 8 U.S.C. § 1255(c), because he was last admitted to the United States as “C-1 nonimmigrant alien crewman in immediate and continuous transit through the United States.” Because the Applicant is ineligible for adjustment of status, the Director found that his Form I-601, Application for Waiver of Ground of Inadmissibility, would serve no purpose.

The matter is now before us on appeal.¹ On appeal, the Applicant submits a brief and no additional evidence. The Applicant states that he was admitted in C-1 crewman status in error by a U.S. Customs and Border Protection officer and therefore should be eligible for adjustment of status. The Applicant further asserts that he should not be inadmissible under section 212(a) (9) (A) and (C) of the Act as his 2 week absence from the United States was “brief, casual, and innocent.” He further states that he has established eligibility for a waiver of inadmissibility, as the evidence in the

¹ The Applicant states on Form I-290B, Notice of Appeal or Motion, and in his brief that he is appealing the denial of his Form I-601, as well the denials of his Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, and his Form I-485, Application to Register Permanent Residence or Adjust Status. The Applicant submitted only one Form I-290B. A separate Form I-290B and fee are required for each application type over which there are appeal rights. The authority to adjudicate appeals is delegated to us by the Secretary of Homeland Security pursuant to the authority vested in the Secretary through the Homeland Security Act of 2002, Pub. L. 107-296. *See* Department of Homeland Security Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1. No appeal lies from the denial of an application under section 245 of the Act. We accept the I-290B as an appeal of only the Form I-601.

(b)(6)

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aggregate demonstrates that his U.S. citizen spouse would suffer extreme hardship if his waiver were not granted.

We will withdraw the decision of the Director and remand for further proceedings to determine the Applicant's admission classification and for the entry of a new decision on the Form I-601, which, if adverse, shall be certified to us for review.

I. LAW

The Applicant is seeking adjustment of status and has been found ineligible under section 245(c) of the Act, which states that a foreign national crewman shall not be eligible for adjustment of status. *See also* 8 C.F.R. § 245.1.

The Applicant has also been found inadmissible for a fraud or misrepresentation, specifically, attempting to enter the United States as a nonimmigrant with his Canadian passport, when in fact, he was an intending immigrant. Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national 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 the Act.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

II. ANALYSIS

On appeal, the Applicant states that he last sought admission to the United States as a Canadian citizen, presenting his Canadian passport, and he did not seek admission as a crewmember in transit. He states on appeal that he "was classified as a C-1 crewman by mistake." The Applicant also asserts that should not be inadmissible to the United States under any ground of inadmissibility.²

The record shows that the Applicant's last admission to the United States was through [REDACTED] in 2009. His Canadian passport was stamped C-1. Admissions records confirm that the Applicant was admitted in C-1 status. A C-1 admission is given to a nonimmigrant in immediate and continuous transit through the United States. Section 101(a)(15)(C) of the Act. This status also permits nonimmigrant crewmembers to arrive in the United States and request direct

² The record shows that the Applicant is inadmissible under section 212(a)(6)(C) of the Act, as he sought to procure admission to the United States in 2008 by presenting his Canadian passport and stating that he was a temporary visitor to the United States, when he in fact resided and worked in the United States with his U.S. citizen spouse. As a result, the Applicant was found inadmissible under section 212(a)(7)(A) of the Act, 8 U.S.C. § 1182(a)(7)(A), as an immigrant not in possession of a proper visa and ordered removed pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The Applicant is also inadmissible to the United States under section 212(a)(9)(A)(i) of the Act as a result of this order of removal.

and immediate transit to their vessel. The bar to adjustment of status at section 245(c) of the Act applies to a foreign national who was admitted as a C-1 nonimmigrant to join a crew. See *Matter of Tzimas*, 10 I&N Dec. 101 (BIA 1962). But, the bar to adjustment of status at section 245(c) of the Act does not apply nonimmigrants admitted in C-1 status for immediate and continuous transit through the United States. 7 USCIS Policy Manual, B.7(A)-(B), <https://www.uscis.gov/policymanual> (stating that the [the] bar at 245(c) of the Act “does not apply to a foreign national who was admitted as a transit alien with a C-1 or C-2 or C-3 nonimmigrant visa.”). No documentation in the record shows that the Applicant was admitted in C-1 status in error.³ However, no documentation in the record shows that the Applicant was admitted as a crewmember in immediate and continuous transit through the United States, rather than as a nonimmigrant in immediate and continuous transit through the United States.

In addition, the Director stated that the Applicant is inadmissible under section 212(a)(9)(C) of the Act, as a result of his returning to the United States 2 weeks after he was ordered removed and before the 5-year period of inadmissibility had run. The Applicant, however, did not return to the United States without being admitted, as required for a finding of inadmissibility under section 212(a)(9)(C) of the Act. The Applicant was admitted in C-1 status after the entry of his removal order; therefore he is not subject to section 212(a)(9)(C) of the Act. There is also no indication in the record that reinstatement of removal order proceedings have been initiated in the Applicant’s case. Therefore, the Director’s reference to section 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5), does not apply to the Applicant’s case at this time. The Applicant, however, remains inadmissible under sections 212(a)(6)(C) and section 212(a)(9)(A)(i) of the Act.

III. CONCLUSION

The Director denied the Form I-601 based on a finding that the Applicant did not establish eligibility to adjust status, in part, because he was last admitted to the United States as a crewmember, a determination that is not supported by the record. We remand to the Director for clarification on the basis for the finding that the Applicant was admitted as a crewmember and not simply a nonimmigrant in immediate and continuous transit through the United States and issuance of a new decision on the Form I-601.

ORDER: The decision of the Dallas Field Office Director, Irvine, Texas, is withdrawn. The matter is remanded to the Dallas Field Office Director, Irvine, Texas, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of V-M-M-*, ID# 12418 (AAO Sept. 8, 2016)

³ Government documents are entitled to a presumption of regularity. *Matter of P-N-*, 8 I&N Dec. 456, 458 (BIA 1959).