

(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Avenue, NW, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: FEB 12 2014

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the waiver application and the Administrative Appeals Office (AAO) summarily dismissed the appeal. The AAO will withdraw its prior decision and reopen this matter on Service motion. The appeal will be dismissed and the underlying waiver application remains denied.

The applicant is a native and citizen of Mexico who contends he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen daughter.

The Director found that USCIS was unable to verify that the applicant was interviewed by a consular officer to determine whether a ground of inadmissibility applies. The director denied the waiver application accordingly. On appeal, the AAO noted that no brief or additional documents related to the appeal were received and, therefore, the AAO summarily dismissed the appeal for failing to identify any erroneous conclusion of law or statement of fact in the Director's decision.

Counsel has submitted evidence that he did, in fact, submit a brief and additional evidence in support of the appeal. The matter is, therefore, reopened on Service motion.

Counsel has submitted a brief and new documentary evidence to support the applicant's waiver application.

After a careful review of the entire record, the AAO concludes that the applicant's waiver application must remain denied. Counsel concedes that the applicant has not yet been interviewed by a consular officer. Counsel asserts the applicant did not attend his interview because he was ill and counsel has requested the interview be rescheduled. A search of available databases confirms that the interview has not yet taken place and does not indicate that the interview has been rescheduled. The instructions to the Form I-601 state that an immigrant visa applicant who is outside the United States may file the Form I-601 if they have had a visa interview with a consular officer and were found inadmissible. Therefore, in the absence of a determination by the consular officer that the applicant is inadmissible to the United States, adjudicating the merits of the applicant's waiver application is premature. If the consular officer finds the applicant inadmissible on any grounds and is eligible to apply for a waiver, the applicant may file a new waiver application at that time.

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.

**ORDER:** The appeal is dismissed and the underlying waiver application remains denied.