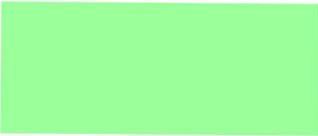


(b)(6)

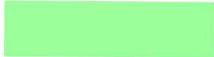


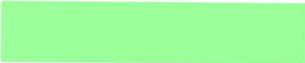
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



DATE: **SEP 29 2014**

Office: YAKIMA

File: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Yakima, Washington, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico, who is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for one year or more. The applicant seeks a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of an approved Petition for Alien Relative (Form I-130).

The field office director concluded the applicant's Form I-601 to have been improperly filed and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) for lack of an underlying Application to Register Permanent Residence or Adjust Status (Form I-485). *Decision of Field Office Director*, March 13, 2014.

The applicant claims to have resided unlawfully in the United States from August 23, 1993, when she entered the country without admission or parole, until about December 2013, when she returned to Mexico. The record reflects that a Petition for Alien Relative (Form I-130) filed by the applicant's husband was approved on June 18, 2013 (after her sister's immigrant petition, which was originally denied on February 17, 2011 for abandonment, was approved on February 21, 2012), and she departed the country to apply for an immigrant visa. Although there is evidence she paid the immigrant visa fee, the record does not show she attended a consular interview or was advised by a consular officer that a waiver was required.

Waiver applicants located outside the United States historically filed Form I-601 with the embassy or consulate in their country of residence for forwarding to USCIS for decision. However, as of June 4, 2012, USCIS began requiring these applications to be filed with a USCIS Lockbox<sup>1</sup> for centralized adjudication by the Nebraska Service Center (NSC). *See USCIS Policy Memorandum, Exceptions for Permitting the Filing of Form I-601, Application for Waiver of Grounds of Inadmissibility, and any associated Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, at International USCIS Offices*, November 30, 2012.

The record indicates that that applicant listed a [REDACTED] WA address on the Form I-601 as her residence, which caused it to be processed by the Yakima Field Office, the office with jurisdiction over this place of residence, rather than by the NSC. We note that, while limited circumstances may permit an international field office director to adjudicate a Form I-601, instead of the NSC, there is no provision for processing by a domestic field office of the waiver sought by an overseas applicant. As the applicant was overseas at the time she filed a Form I-601, the NSC alone has jurisdiction to consider the application. Further, however, there is no evidence she has been deemed inadmissible by a consular officer and told that she needed obtain a waiver of inadmissibility in order to

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<sup>1</sup> Waiver applications for immigrant visa applicants found inadmissible by a consular officer must now be filed at the [REDACTED]

immigrate. The Form I-601 instructions state that a Form I-601 filer outside the country must have previously had a visa interview with a consular officer and been found inadmissible.<sup>2</sup>

Because the applicant is currently overseas, when the consular officer processing her visa application determines she is inadmissible and requires a waiver, she should submit a new Form I-601<sup>3</sup> to the Phoenix, AZ Lockbox indicating she is applying for an immigrant visa and listing her foreign residence address.

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, as the applicant's error caused the application to be adjudicated by an office lacking jurisdiction.

**ORDER:** The appeal is dismissed.

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<sup>2</sup>. See 8 C.F.R. § 103.2, which states, "Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission."

<sup>3</sup> We note that waiver filing signed by the applicant and dated December 19, 2013 is a Form I-601, Application for Waiver of Grounds of Inadmissibility, which is accompanied by a supporting letter prepared by a family friend and dated December 19, 2013 (on the first page), as well as December 18, 2013 on subsequent pages, purporting to support a Form I-601A, Application for Provisional Unlawful Presence Waiver. The record contains no completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.