



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

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

MATTER OF G-Z

DATE: DEC. 11, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of China, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within ten years of his last departure from the United States. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

In a January 7, 2015 decision, the Director concluded that the Applicant was permanently ineligible for any benefits pursuant to section 208(d)(6) of the Act, for having knowingly made a frivolous application for asylum. The Form I-601 was denied accordingly.

On appeal, the Applicant indicates that he did not speak English when he applied for asylum, that the asylum forms and documents were prepared by his lawyer, and that he was never informed about section 208(d)(6) of the Act and the serious consequences of violating the section. In support of the instant appeal, the Applicant submits a statement, medical and financial documentation, photographs and identification documents for his spouse, children and other family members on appeal. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The Applicant entered the United States without inspection on May 16, 1998. On April 16, 1999, the Applicant was ordered removed to China. He was thereafter removed from the United States on October 9, 2012. The Applicant does not contest the finding that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued one year or more of unlawful presence, and he therefore requires a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 208(d)(6) of the Act provides in pertinent part:

Asylum Procedure. –

....

Frivolous applications. - If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

The record reflects that on May 25, 1998, the Applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. On April 16, 1999, the Immigration Judge ordered the Applicant's Applications for Asylum and Withholding of Removal denied. The Immigration Judge further noted that the Applicant was permanently barred from any immigration benefits under the Act for having knowingly filed a frivolous asylum application pursuant to section 208(d)(6) of the Act. As aforementioned, the Applicant was also ordered removed to China. On March 22, 2002, the Board of Immigration Appeals (BIA) affirmed the decision of the Immigration Judge. On May 1, 2015, the Form I-130, Petition for Alien Relative, filed by the Applicant's spouse, previously approved on July 20, 2012, was revoked based upon his frivolous asylum application.

The Applicant seeks a waiver of inadmissibility of section 212(a)(9)(B)(i)(II) of the Act. However, the Applicant is permanently ineligible for any benefit under the Act because he was determined by an Immigration Judge to have knowingly made a frivolous application for asylum. Although the Applicant asserts that he was unaware of the consequences of section 208(d)(6) of the Act, the official transcript of the Immigration Judge's hearing establishes that he was specifically notified of the consequences under section 208(d)(6) of the Act of making a frivolous asylum claim. Furthermore, with respect to the Applicant's assertions that he did not speak English and he did not prepare the forms and documents pertaining to his asylum request, the Applicant had the duty and the responsibility to review the application and any supporting documentation (and obtain translations if anything was not clear to him) prior to submission.

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The Act makes clear that a foreign national seeking admission must establish admissibility “clearly and beyond doubt.” See section 235(b)(2)(A) of the Act; see also section 240(c)(2)(A) of the Act. The same is true for demonstrating admissibility in the context of an application for adjustment of status. See generally *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008); *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). The record establishes that the Applicant is statutorily ineligible for a waiver of inadmissibility under section 212(a)(9)(B)(v), a benefit under the Act, because he was determined by an Immigration Judge to have knowingly made a frivolous application for asylum.

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.

Cite as *Matter of G-Z-*, ID# 13907 (AAO Dec. 11, 2015)