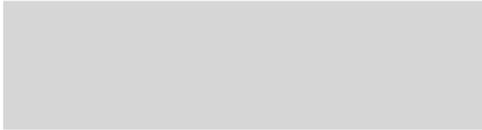




(b)(6)

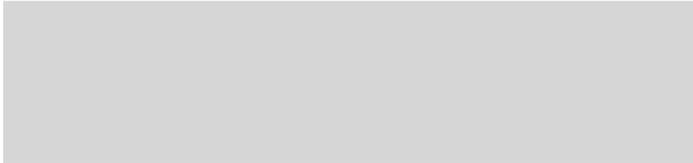


Date: **MAR 31 2015** Office: **NEBRASKA SERVICE CENTER** FILE:

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:



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 Director, Nebraska Service Center, denied the waiver application and the matter 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 filed a waiver application pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The service center director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) for lack of evidence that the applicant had already been interviewed and found inadmissible by a consular officer and noted that the record indicated she had not attended a scheduled interview. *Decision of Service Center Director, June 19, 2014.*

On appeal, the applicant states that she notified the consulate that she intended to postpone her interview pending adjudication of the I-601 waiver application and asserts that the sole basis for the denial of the waiver application was an erroneous assumption that she had failed to appear for the interview without notifying the Consulate. The applicant contends that USCIS should process the application and not base its decision on whether she attended her immigrant visa interview. With the appeal the applicant submits a copy of her immigrant visa appointment notice and correspondence with the U.S. consulate requesting they reschedule her interview pending a USCIS decision on the Form I-601. The record contains a U.S. Department of State Fee Payment Receipt, notice of the applicant's scheduled immigrant visa interview, documentation to verify the applicant's marriage to a U.S. citizen, an affidavit from the applicant's spouse, a mental health assessment for the spouse, and letters of support from family. The entire record was reviewed and considered in rendering this decision.

A Form I-601, Application for Waiver of Grounds of Inadmissibility, may be filed by immigrant visa applicants who are outside the United States who have had a visa interview with a consular officer and have been found to be inadmissible. *See Instructions for Application for Waiver of Grounds of Inadmissibility.* Regulations require that form instructions be followed, *see* 8 C.F.R. § 212.7(a)(1).

The record indicates that the applicant filed a Form I-601 waiver application on August 20, 2013, and that although she had paid the immigrant visa fee, she had not yet departed the United States or been scheduled for her immigrant visa interview. The Nebraska Service Center, which adjudicates Form I-601 applications for immigrant visa applicants who are outside the United States, issued a Request for Evidence (RFE) on February 24, 2014, asking for evidence of a pending Application to Adjust Status (Form I-485) or a pending visa application. In a response dated March 12, 2014, the applicant stated that she intended to apply for an immigrant visa at the U.S. Consulate in Ciudad Juarez, Mexico, and included a copy of her appointment notice for an immigrant visa interview scheduled at the U.S. Consulate in Ciudad Juarez on April 4, 2014. On April 1, 2014, the applicant notified the consulate that she wanted to reschedule her interview pending a decision by USCIS on the I-601 waiver application.

As noted in the RFE, The Form I-601 instructions require that individuals filing from outside the United States show that a consular inadmissibility determination preceded their waiver request. An individual filing inside the United States must have a pending Form I-485, Application to Adjust Status. As the record indicates that the applicant is in the United States and has not yet appeared at a U.S. Consulate for an immigrant visa interview, it appears she erroneously filed the Form I-601, but intended to file the Form I-601A, Application for Provisional Unlawful Presence Waiver. Certain immediate relatives of U.S. Citizens may file an Application for Provisional Unlawful Presence Waiver (Form I-601A) under Section 212(a)(9)(B) of the Act and 8 CFR 212.7(e) before departing the United States to appear for an immigrant visa interview.

The applicant's Form I-601 was not denied because of failure to appear at an immigrant visa interview without notifying the Consulate, as the applicant contends, but rather because immigrant visa applicants may not file a Form I-601 until they have departed the United States, had a visa interview with a consular officer, and been found to be inadmissible. If the applicant intends to apply for a Provisional Unlawful Presence Waiver before departing the United States, the applicant is required to submit Form I-601A.¹

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.

¹ The letter from the U.S. Consulate in Ciudad Juarez confirming that the applicant postponed her immigrant visa interview states, "Thank you for notifying our office of your client's intention to apply for the I-601A provisional waiver." As a Form I-601 may not be filed before an applicant has had a visa interview with a consular officer and been found to be inadmissible, it appears that the Consulate believed the applicant's attorney was referring to a pending Form I-601A rather than a Form I-601 when he requested that the visa interview be rescheduled.