



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

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

MATTER OF A-I-T-

DATE: NOV. 19, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native of Nigeria and citizen of the United Kingdom, seeks a waiver of inadmissibility. *See* § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Service Center Director, Nebraska Service Center, denied the application. The Applicant appealed that decision and we dismissed that appeal. The matter is now before us on motion to reopen and reconsider. The motion will be denied.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to U.S. citizenship. She was also found inadmissible under 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 10 years of her last departure from the United States. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, and seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Director determined that no waiver is available for inadmissibility under section 212(a)(6)(C)(ii) of the Act and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserted that U.S. Citizenship and Immigration Services abused its discretion by not giving her arguments “due consideration” and by not considering her eligibility for a nonimmigrant waiver. She also asserted that he was entitled to a favorable exercise of discretion.

We dismissed the appeal, finding that the Applicant had not applied for a nonimmigrant waiver, that no waiver is available for inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act, and that the evidence did not establish that the Applicant qualified for the exception described in section 212(a)(6)(C)(ii)(II) of the Act.

On motion, the Applicant asserts that we disregarded her Form I-212, Application for Permission to Reapply for Admission after Deportation or Removal. She states that she filed an appeal on a consolidated basis of the Director’s decisions denying both Forms I-212 and I-601. However, the Applicant indicated on her Form I-290B, Notice of Appeal or Motion, that she was appealing the

Director's decision to deny her Form I-601. Even if the Applicant had indicated on her Form I-290B that she was appealing the Form I-601 and the Form I-212 together, applicants are required to file separate appeals for separate decisions. The Director issued two decisions to the Applicant, and she appealed only one decision. Thus, we considered only the Form I-601 appeal.

On motion, the Applicant also asserts that we erred by disregarding her claim of eligibility for a nonimmigrant visa and waiver. This motion concerns a decision to dismiss an appeal of a decision to deny the Applicant's waiver of grounds of inadmissibility as an immigrant. The Applicant does not dispute that she is inadmissible as an immigrant. The issue of eligibility for a waiver of inadmissibility as a nonimmigrant is not before us.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Although the Applicant states that we erred as a matter of policy, she does not show that our decision was incorrect. The requirements of a motion to reconsider have not been met. The requirements of a motion to reopen have also not been met. Therefore, the motion is denied.

The record includes, but is not limited to: briefs, identity and relationship documents, medical records, a declaration from the Applicant's spouse, financial records, photographs and a copy of the Form I-9, signed by the Applicant, attesting that she is a U.S. citizen. The entire record was reviewed and considered in rendering a decision on the motion.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Falsely claiming citizenship.—
 - (I) In general.—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible
 - (II) Exception—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a

citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

The record reflects that the Applicant entered the United States under the visa waiver program on June 24, 1999, with authorization to remain until September 24, 1999. On October 22, 2009, the Applicant signed a Form I-9, Employment Eligibility Verification, under an alias and indicated that she was a U.S. citizen. On February 29, 2012, U.S. Immigration and Customs Enforcement issued the Applicant an order of removal in accordance with section 217 of the Act, finding the Applicant deportable under section 237(a)(3)(D)(i) of the Act for falsely claiming to be a U.S. citizen and under section 237(a)(1)(C)(i) of the Act for unauthorized employment. The Applicant departed the United States on May 23, 2012.

The Applicant is also inadmissible under 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 10 years of her last departure from the United States.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the Applicant accrued more than one year of unlawful presence after April 1, 1997, the effective date for relevant amendments of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), until her filing of a Form I-485, Application to Register Permanent Residence or Adjust Status, on December 28, 2010.

Matter of A-I-T-

The Applicant asserts that while there is no immigrant visa waiver available for an individual who is inadmissible under 212(a)(6)(C)(ii) of the Act, a non-immigrant waiver is available as a matter of discretion under section 212(d)(3)(A) of the Act. The Applicant also asserts that she has no criminal record and that her purpose in visiting the United States is to see her ailing husband, who has a severe medical condition that is explained by a letter from her husband and medical records submitted with the original application.

We note that an applicant seeking a waiver as a nonimmigrant must file Form I-192, Application for Advance Permission to Enter as Nonimmigrant, pursuant to section 212(d)(3)(A)(ii) of the Act, with U.S. Customs and Border Protection. The Applicant filed Form I-601 in conjunction with her immigrant visa application, and section 212(d)(3)(A) of the Act therefore does not apply to her.

Applicants making false claims to U.S. citizenship on or after September 30, 1996, the date of enactment of the IIRIRA, are inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and are ineligible for waiver consideration. No waiver is available for a violation of section 212(a)(6)(C)(ii)(I) of the Act, and the record does not demonstrate that the Applicant qualifies for the exception described in section 212(a)(6)(C)(ii)(II). As there is no waiver of this permanent ground of inadmissibility, no purpose would be served in examining the Applicant's eligibility for a waiver of any other ground of inadmissibility, including her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year.

The motion does not establish that our previous decision was based on an incorrect application of law or policy and therefore the motion will be denied.

In application proceedings, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-I-T-*, ID# 13167 (AAO Nov. 19, 2015)