



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

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

MATTER OF E-V-G-

DATE: NOV. 23, 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 Mexico, 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 of the 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 remaining in the United States unlawfully for one year or more and seeking admission within 10 years of her departure from the United States.

The record reflects that the Director issued a request for evidence (RFE) on September 24, 2014, asking for evidence that the Applicant had been interviewed by a Department of State consular officer and found to be inadmissible and ineligible for an immigrant visa; however, the Applicant did not respond to the RFE.

In a decision dated January 22, 2015, the Director acknowledged that the record demonstrated that denial of the Applicant's admission into the United States would have an adverse effect on her family. The Director determined, however, that the record lacked evidence establishing that the Applicant had been interviewed by a consular officer and found to be inadmissible and ineligible for an immigrant visa. The Form I-601 was denied accordingly based on the Applicant's failure to file the application in accordance with instructions for the form.

On appeal, the Applicant asserts that the evidence in the record demonstrates that her spouse would experience extreme hardship if she were denied admission into the United States. The Applicant does not, however, address the basis of the Director's denial of her Form I-601.

Regulations require that application form instructions be followed. *See* 8 C.F.R. § 212.7(a)(1). According to the instructions for the Form I-601, the application may be filed by immigrant visa applicants who are outside the United States, have had a visa interview with a consular officer, and have been found to be inadmissible. In this case, the record reflects that the Applicant filed the Form I-601

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on June 26, 2014, before she departed the United States for Mexico.¹ The record reflects further that, although the Applicant was eventually interviewed by a consular officer in Mexico regarding her visa eligibility, the interview and visa eligibility determination occurred on January 28, 2015, after the Applicant filed the Form I-601 and after the Director denied the application. Because the Applicant did not file the Form I-601 in accordance with the instructions for the form, the application was improperly filed. Accordingly, the Applicant did not overcome the basis of the Director's denial.

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 E-V-G-*, ID# 14068 (AAO Nov. 23, 2015)

¹ Evidence reflects that the Applicant departed the United States in January 2015.