



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

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

MATTER OF A-D-

DATE: SEPT. 17, 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, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant states that he is inadmissible to the United States 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 one year or more and is seeking readmission within 10 years of departure from the United States. The Applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act in order to reside in the United States with his spouse and children.

The Director concluded that the Applicant was not eligible to file a Form I-601, Application for Waiver of Grounds of Inadmissibility, that the Form I-601 was filed in error, and denied the application accordingly. The Director indicated that a refund could not be issued for Form I-601 if it was submitted in error, and where the Applicant intended to file a Form I-601A, Application for Provisional Unlawful Presence Waiver.

On appeal, the Applicant states that he is requesting that his Form I-601 be approved as he is an immigrant visa applicant and beneficiary of an approved Form I-130, Petition for Alien Relative. The Applicant also states that he believes he is eligible for the provisional unlawful presence waiver that allows individuals who need only a waiver for unlawful presence to apply from within the United States before they depart for their immigrant visa interview at the U.S. consulate. The Applicant states that his inadmissibility would result in extreme hardship to his U.S. citizen son.

The record includes, but is not limited to, documents establishing relationships and identity, letters from the Applicant, school records, and medical records. The entire record was reviewed and considered in rendering this decision.

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

(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.

...

(v) Waiver.-The Attorney General [now the Secretary of the Department of Homeland Security (Secretary)] 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 to the satisfaction of the [Secretary] 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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The Applicant states that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, as he entered the United States without inspection on December 18, 2007, and has remained in the United States unlawfully since his arrival. The Applicant's unlawful presence becomes a ground of inadmissibility once the Applicant departs the United States and seeks admission within 10 years of the date of his departure.

A Form I-601 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 Form I-601, Application for Waiver of Grounds of Inadmissibility*, available at <http://www.uscis.gov/i-601>. The regulations require that form instructions be followed. 8 C.F.R. § 212.7(a)(1). The Applicant does not appear to be outside of the United States. The Director issued a Request for Evidence (RFE) stating that Department of State records indicated that the applicant has a pending visa application, but that there was no record that the Applicant had been interviewed by a consular official and found ineligible for an immigrant visa based on a ground of inadmissibility. The Director requested that the Applicant submit such evidence. In response, the Applicant stated that his application was based on changes to U.S. immigration laws in 2013 that now allow immigrants to seek a waiver before leaving the United States. His Form I-601 was denied, as the type of application the Applicant refers to must be filed on Form I-601A instead of Form I-601.

(b)(6)

*Matter of A-D-*

On appeal, the Applicant states that he wishes to seek and immigrant visa at the U.S. Consulate in [REDACTED].<sup>1</sup> He states that he believes that he can apply for a provisional waiver before he departs the United States based on information from the U.S. Citizenship and Immigration Services (USCIS) website stating that beginning March 4, 2013, certain immigrant visa applicants who are spouses, children, and parents of U.S. citizens may apply for a provisional unlawful presence waivers before they depart the United States. The Applicant included a copy of a printout from the USCIS website concerning provisional unlawful presence waivers.

An individual filing a Form I-601 from inside the United States must have a pending Form I-485, Application to Register Permanent Residence or Adjust Status. The record does not show that the Applicant has filed a Form I-485. As the record indicates that the Applicant is inside the United States and intends to apply for an immigrant visa at the U.S. Consulate, he erroneously filed the Form I-601 instead of the Form I-601A.

Certain immediate relatives of U.S. citizens may file a Form I-601A from inside the United States and before departing the United States to appear for an immigrant visa interview. The record does not show that the Applicant is eligible to file Form I-601, and Director correctly denied that application. Should the Applicant wish to file Form I-601A, he should follow the instructions for that form. See *Instructions for Form I-601A, Application for Provisional Unlawful Presence Waiver*, available at <http://www.uscis.gov/i-601a>.

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 A-D-*, ID# 13181(AAO Sept. 17, 2015)

---

<sup>1</sup> The Applicant also states that he seeks a waiver of inadmissibility based on extreme hardship to his U.S. citizen son. The Applicant's son, however, is not a qualifying relative under section 212(a)(9)(B)(v) of the Act. Only a U.S. citizen or U.S. lawful permanent resident spouse or parent may serve as a qualifying relative under this provision.