



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

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

MATTER OF H-D-L-

DATE: JAN. 15, 2016

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 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 one year or more, and under section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(3)(A)(ii), as an alien who a consular officer knows or has reasonable ground to believe, seeks to enter the United States to engage illegal activity as a member of a street gang. Noting that there is no waiver for this ground of inadmissibility, the Director observed that this inadmissibility may support denial of the waiver as a matter of discretion and, accordingly, denied the Form I-601. *Decision of Service Center Director*, April 2, 2015.

On appeal, the Applicant asserts he is not inadmissible pursuant to section 212(a)(3)(A)(ii) of the Act. He states the Director abused his discretion by not specifying the grounds for his denial decision and by not giving notice of derogatory information forming the basis for the decision. Claiming there is insufficient evidence to establish that he participated in activities which would make him inadmissible under section 212(a)(3)(A)(ii), he asserts that establishing extreme hardship to a qualifying relative entitles him to a waiver of his unlawful presence inadmissibility.

The record includes, but is not limited to, the Applicant's appeal brief, statements from the Applicant and his qualifying spouse, photographs, online news articles and tattoo information, and a waiver application with medical records, birth and marriage certificates, and supporting statements. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(3)(A) of the Act provides, in pertinent part:

Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in— ... (ii) any ... illegal activity ... is inadmissible.

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There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(3)(A)(ii) of the Act.

The Applicant contends that until receiving the Form I-601 denial, he was unaware of being a suspected gang member or of any derogatory information that formed the basis for this finding. The record indicates, however, that the Applicant's immigrant visa was refused on August 11, 2014 on two grounds, section 212(a)(9)(B)(i)(II) for unlawful presence and section 212(a)(3)(A) for illegal activity. Three months later, on the Form I-601 filed on November 14, 2014, he addressed the street gang issue by specifically denying any gang affiliation and explaining that his tattoos were not gang-related. His wife's November 10, 2014, statement also claims the Applicant is not a gang member. These statements indicate awareness well before receiving the Form I-601 denial that he was believed to be a member of a gang and found inadmissible by a consular officer based on this finding.<sup>1</sup>

We find that the Applicant's inadmissibility under section 212(a)(3)(A)(ii) of the Act is a proper basis for denying the Form I-601, as no purpose is served in adjudicating a waiver application where an immigrant visa application cannot be approved due to a separate non-waivable ground of inadmissibility. Because no purpose would be served in adjudicating a waiver application under section 212(a)(9)(B)(v) of the Act where the Applicant would remain inadmissible under another ground, the Form I-601 was properly denied. The appeal will therefore be dismissed.

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 H-D-L-*, ID# 14901 (AAO Jan. 15, 2016)

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<sup>1</sup> The record indicates that during an interview with a consular officer, the Applicant disclosed prior drug use and was also questioned about his tattoos. Based on his drug use and criminal history (the Applicant was arrested in 2004 for brandishing an imitation weapon and convicted of disturbing the peace as a result) and tattoos believed to represent a street gang, the consular officer found reasonable ground to believe the Applicant was involved with the [REDACTED] street gang. The decision of the Director refers to the [REDACTED] street gang," but this appears to be a typographical error.