



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

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

MATTER OF B-E-J-H-

DATE: JULY 28, 2016

APPEAL OF PHOENIX, ARIZONA FIELD OFFICE 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 for unlawful presence. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Field Office Director, Phoenix, Arizona, denied the application. The Director concluded that United States Citizenship and Immigration Services (USCIS) did not have jurisdiction to review the Applicant's waiver application because she was in removal proceedings and because there was no underlying application for adjustment.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in determining that USCIS did not have jurisdiction over the Applicant's waiver application. The Applicant also claims that the Director's decision was incorrect because the Applicant had already departed the United States prior to the conclusion of her removal proceedings and had been subsequently ordered removed in absentia.

Upon *de novo* review, we will remand the matter to the Field Office Director to forward to the Nebraska Service Center, the USCIS office with jurisdiction over waiver applications for immigrant visa applicants, for adjudication and issuance of a new decision.

**I. LAW**

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence. Specifically, the Applicant was found inadmissible for having been unlawfully present in the United States from 2002, when she entered without inspection, to 2011. Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent parts:

(i) In General

(b)(6)

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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.

(ii) Construction of Unlawful Presence

For purposes of this paragraph an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

## II. ANALYSIS

The issues on appeal are whether USCIS has jurisdiction to adjudicate the Applicant's waiver application and whether the Applicant was eligible to file the application. The Director found that the Applicant was in removal proceedings and had no underlying application for adjustment of status, and USCIS therefore did not have jurisdiction over the Applicant's Form I-601. The Applicant claims that she is no longer in removal proceedings and has been ordered removed in absentia. As such, the Applicant claims, USCIS has jurisdiction over her waiver application. The record indicates the Applicant, who is residing in Mexico and has a pending application for an immigrant visa, correctly filed her application, and USCIS has jurisdiction over the application. We will remand the matter to the Director to forward to the Nebraska Service Center, the USCIS office with jurisdiction over waiver applications for immigrant visa applicants, for adjudication and issuance of a new decision.

In this case the Applicant is the beneficiary of a Form I-130, Petition for Alien Relative, filed by her husband in 2010. The Applicant departed the United States in December 2011 to apply for an immigrant visa and filed a waiver application in March 2012 after being found inadmissible by a consular officer pursuant to section 212(a)(9)(B)(i)(II) of the Act. The Field Office Director, Mexico City, Mexico, denied the waiver application in December 2012, finding that the Applicant had not established extreme hardship to a qualifying relative. The Applicant then filed a second Form I-601 in September 2013, and on the Form I-601, she indicated that she was residing in Mexico and had an immigrant visa application pending in [REDACTED] Mexico and provided her consular case number.<sup>1</sup>

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<sup>1</sup> The Applicant also filed a Form I-212, Application for Permission to Reapply for Admission Into the United States after Deportation or Removal, in September 2013. That application was denied by the Director in a separate decision and is not the subject of this appeal.

The Instructions to Form I-601, Application for Waiver of Grounds of Inadmissibility, state that if one is an applicant for an immigrant visa, is residing outside the United States, and has had a visa interview with a consular officer and been found inadmissible, that person may file a waiver application. *Instructions*, Form I-601, Waiver of Grounds of Inadmissibility. The Applicant's immigrant visa application remains pending, and we find that as she had a visa interview with a consular officer and was found inadmissible, her waiver application was properly filed and USCIS has jurisdiction to adjudicate the application.

### III. CONCLUSION

The USCIS office with jurisdiction over Form I-601 waiver applications for immigrant visa applicants is currently the Nebraska Service Center. The matter will be remanded to the Field Office Director to forward to the Nebraska Service Center for adjudication and issuance of a new decision. If that decision is adverse to the applicant, it shall be certified for review to the AAO.

**ORDER:** The decision of the Field Office Director, Phoenix, Arizona, is withdrawn. The matter is remanded to the Field Office Director, Phoenix, Arizona, for further proceedings consistent with the foregoing opinion.

Cite as *Matter of B-E-J-H-*, ID# 16486 (AAO July 28, 2016)