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

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

MATTER OF O-J-M-S-

DATE: MAR. 11, 2016

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Peru, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) §§ 212(a)(9)(B)(v) and 212(i), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i). The Field Office Director, Newark, New Jersey, denied the application. The matter is now before us on appeal. The appeal will be remanded to the Director for further proceedings consistent with this decision.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by willfully misrepresenting a material fact. The Applicant was also found inadmissible 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 seeking admission within 10 years of his last departure from the United States.

In a decision dated July 20, 2015, the Director determined that the Applicant had no pending Form I-485, Application to Adjust Status and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility accordingly.

On appeal, the Applicant resubmits a copy of a Form I-797, Notice of Action, indicating that the Form I-130, Petition for Alien Relative, his U.S. citizen spouse filed on his behalf had been approved and forwarded to the Department of State National Visa Center. He also submits a copy of an immigrant-visa interview notice from the U.S. embassy in [REDACTED] Peru; photocopies of his spouse's U.S. passport pages; and an untranslated copy of a Department of State letter from the U.S. embassy in [REDACTED] dated March 23, 2010.

The record also includes, but is not limited to statements from the Applicant and his spouse; a clinical psychologist's evaluation of the Applicant's spouse; and photographs. The entire record was reviewed and considered in rendering this decision.

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

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or

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admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

(1)The Attorney General [now the Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on June 8, 2002, the Applicant attempted to enter the United States after presenting false travel documents in the name of Mexican national [REDACTED]. The Applicant is therefore inadmissible under section 212(a)(6)(C) of the Act, for making a material misrepresentation concerning his identity to enter the United States. The Applicant does not contest this finding of inadmissibility.

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

(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 [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.

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The record also reflects the Applicant claims to have entered the United States in January 2006 and stayed until May 2008. He accrued more than one year of unlawful presence after his arrival. By departing the United States in May 2008, he triggered the unlawful presence bar, which rendered him inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for one year or more. The Applicant does not challenge this finding of inadmissibility.

The Applicant attended an interview at the U.S. embassy in [REDACTED] Peru, and was found inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i) of the Act. He filed a Form I-601 on June 23, 2015, indicating that he had an immigrant visa application pending and providing his consular case number.

The record further reflects that the Applicant submitted the Form I-601 to the Chicago, Illinois Lockbox facility, which is the filing address for applicants residing in the United States who have applications for adjustment of status pending. Filing instructions found at [www.uscis.gov](http://www.uscis.gov) indicate the proper address to submit a waiver application for individuals outside the United States who are applying for immigrant visas is the Phoenix, Arizona Lockbox facility. Nevertheless, the filing was accepted and the application was forwarded to the Newark Field Office.

The U.S. Citizenship and Immigration Services office with jurisdiction over Form I-601 waiver applications for immigrant visa applicants living overseas is 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 Director, Newark Field Office, is withdrawn. The matter is remanded to the Director, Newark Field Office, for further proceedings consistent with the foregoing opinion.

Cite as *Matter of O-J-M-S-*, ID# 15902 (AAO Mar. 11, 2016)