



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

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

MATTER OF M-G-D-

DATE: NOV. 21, 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 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 Director, Nebraska Service Center, denied the waiver application. The Director stated that the Nebraska Service Center was unable to adjudicate the Applicant's waiver application because the Applicant had not yet been found inadmissible by a consular officer. Evidence submitted with the waiver application indicated that the Applicant filed an immigrant visa application, but did not demonstrate that she had been interviewed by a consular officer to determine her eligibility for a visa and whether she was subject to a ground of inadmissibility.

The matter is now before us on appeal. In the appeal, the Applicant states that she qualifies for a Form I-601A, Application for Provisional Unlawful Presence Waiver and should have filed this form instead of a Form I-601. The Applicant requests that her initial filing be considered a Form I-601A or she be given additional time before her visa interview so that she can file a Form I-601A.

Upon *de novo* review, we will dismiss the appeal.

The Form I-601 instructions state that a Form I-601 may be filed by immigrant visa applicants who are outside the United States or individuals inside the United States who have a pending Form I-485, Application to Adjust Status. The instructions require that individuals filing from outside the United States show that a consular inadmissibility determination preceded their waiver request. The Code of Federal Regulations requires that form instructions be followed, *see* 8 C.F.R. § 212.7(a)(1).

The record indicates that the Applicant filed a Form I-601 waiver application on June 29, 2015. The Nebraska Service Center, which adjudicates Form I-601 applications for immigrant visa applicants who are outside the United States, issued a Request for Evidence, asking for evidence of a consular interview and issuance of a refusal notice stating the Applicant's inadmissibility ground. In her

Matter of M-G-D-

response, the Applicant submitted evidence that she had paid her immigrant visa fee, but no evidence of a consular interview and finding of inadmissibility.

The record indicates that the Applicant is in the United States and has not yet appeared at a U.S. consulate for an immigrant visa interview. She erroneously filed a Form I-601 when she intended to file a Form I-601A, which allows certain immediate relatives of U.S. Citizens to file a provisional waiver application under Section 212(a)(9)(B) of the Act and 8 CFR 212.7(e) before departing the United States to appear for an immigrant visa interview. An individual inside the United States must have a pending Form I-485, Application to Adjust Status, to file a Form I-601.

Although the record shows that the Applicant has filed an immigrant visa application, she is in the United States, and there has been no initial finding of visa eligibility or an inadmissibility finding by a consular officer. A waiver application serves the purpose of removing an inadmissibility bar to allow for approval of a visa or adjustment application. 8 C.F.R. § 212.7(a)(1). As that purpose cannot be served in this case, the waiver application is properly denied in the exercise of discretion.¹ The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-G-D-*, ID# 10374 (AAO Nov. 21, 2016)

¹ If the Applicant intends to apply for a waiver under section 212(a)(9)(B)(v) of the Act before departing the United States, the Applicant is required to submit a Form I-601A.