



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

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

MATTER OF J-A-R-H-

DATE: OCT. 11, 2016

APPEAL OF SAN JUAN, PUERTO RICO FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, 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, San Juan, Puerto Rico, denied the application. The Director concluded that the Applicant had not married the petitioner of the fiancé visa which had given him authorization to enter United States, and he is therefore not eligible for a waiver of inadmissibility.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that his spouse has Lupus and cannot take care of their young child without the Applicant's assistance.

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

**I. LAW**

The Applicant is seeking to adjust status to that of a lawful permanent resident and requested a waiver of inadmissibility for unlawful presence. Section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i), provides that a foreign national who 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 departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(ii) of the Act provides that a foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or is present in the United States without being admitted or paroled.

## II. ANALYSIS

The Applicant states that he is inadmissible under section 212(a)(9)(B)(i) of the Act for unlawful presence and requests a waiver of inadmissibility. The Director did not make a finding that the Applicant is inadmissible for unlawful presence, but denied the application to adjust status on other grounds. The Applicant subsequently filed the waiver application, stating he was inadmissible for unlawful presence, but the record does not establish that he is inadmissible under section 212(a)(9)(B) of the Act as it appears he has not departed the United States since his entry on December 2, 2006, with a fiancé visa. Even if the Applicant were currently inadmissible under section 212(a)(9)(B)(i) of the Act, the waiver application would be denied as a matter of discretion because the Applicant has been found ineligible for adjustment of status, and we will therefore dismiss the appeal.

The Applicant entered the United States in December 2006 with a fiancé visa but did not marry the petitioner of the fiancé visa and did not depart the United States. The Applicant married a different individual and has sought to adjust status based on a petition filed by his current spouse. The Director denied the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, on December 31, 2014, pursuant to section 245(d) of the Act, which provides that the status of an individual admitted as a K1 fiancé may only be adjusted to that of a lawful permanent resident based on marriage to the petitioner of the fiancé visa petition.

The Applicant has filed an adjustment of status application, which the Director denied, finding that the Applicant did not establish eligibility to adjust status pursuant to section 245(d) of the Act. The present waiver application cannot cure this ineligibility, and the adjustment of status application would remain denied notwithstanding a decision to grant the waiver. A waiver application serves the purpose of removing an inadmissibility bar to adjustment of status. 8 C.F.R. § 212.7(a)(1). As that purpose cannot be served in this case, and because the Applicant is not currently inadmissible under section 212(a)(9)(B) of the Act, the waiver application is unnecessary and was properly denied.

## III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the Applicant is not inadmissible for unlawful presence and does not require a waiver. Further, the Applicant has been found ineligible for adjustment of status, and his application to adjust status has been denied. The waiver application was properly denied, and we will dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-A-R-H-*, ID# 118598 (AAO Oct. 11, 2016)