



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

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

MATTER OF J-A-R-H-

DATE: SEPT. 22, 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 application as a matter of discretion. The Director concluded that although the Applicant is inadmissible for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), he also is inadmissible under section 212(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iv), as a drug abuser or addict, a ground of inadmissibility for which no waiver is available.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence.

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

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence, specifically for his unlawful presence between 2003 and 2008, and as a drug abuser or addict.

Section 212(a)(1)(A)(iv) of the Act provides, in pertinent part, that a foreign national who is determined, in accordance with regulations prescribed by the Secretary of Health and Human Services, to be a drug abuser or addict is inadmissible. No waiver is available for this ground of inadmissibility.

Section 212(a)(9)(B)(i)(II) of the Act provides that a foreign national who has been unlawfully present in the United States for 1 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.

Section 212(a)(9)(B)(v) of the Act provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent.

II. ANALYSIS

The issues before us are whether the Applicant has established that he is eligible for a waiver of inadmissibility and whether the Applicant has established that he is no longer inadmissible as a drug abuser or addict.

A. Inadmissibility

1. Health-Related: Drug Abuser or Addict

The Applicant has been found inadmissible for being a drug abuser or addict under section 212(a)(1)(A)(iv). The record reflects that a U.S. consular officer determined that the Applicant's 2014 medical examination results indicated he was a drug abuser or addict. The Applicant contests this finding of inadmissibility on appeal by submitting medical records showing he participated in a relapse prevention program in Mexico and that he tested negative for cocaine, cannabis, and amphetamines in 2015.

The evidence the Applicant submits on appeal, however, is insufficient to overcome this ground of inadmissibility, because the record lacks evidence showing the inadmissibility finding has been reversed. Only medical examiners, such as panel physicians, civil surgeons, or other physicians designated by the Director of Health and Human Services, may make determinations that an individual is a drug abuser or addict. USCIS does not have jurisdiction to overturn a finding made by an authorized medical examiner.¹ See 42 C.F.R. § 34. Furthermore, although the Act provides for waivers of inadmissibility of sections 212(a)(1)(A)(i), 212(a)(1)(A)(ii), and 212(a)(1)(A)(iii) of the Act, there is no waiver of inadmissibility for section 212(a)(1)(A)(iv) of the Act. The Applicant is statutorily inadmissible under section 212(a)(1)(A)(iv) of the Act, a section for which no waiver was available.

¹ If the Applicant is found by a panel physician to be in sustained, full remission, he may be found admissible, but such a determination must be made by a panel physician.

2. Unlawful Presence

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence, a determination supported by the record.² The Applicant does not contest his inadmissibility. He submitted evidence of hardship to a qualifying relative, his U.S. citizen spouse. However, because the Applicant would remain inadmissible under section 212(a)(1)(A)(iv) of the Act, no purpose would be served in evaluating his eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. The Applicant's appeal is therefore dismissed as a matter of discretion, as its approval would not result in his admissibility to the United States.

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. The Applicant has not met that burden. The Applicant has not established that he is eligible for a waiver, as he has not shown that he is not a drug abuser or addict.

ORDER: The appeal is dismissed.

Cite as *Matter of J-A-R-H-*, ID# 123295 (AAO Sept. 22, 2016)

² The record reflects that the Applicant entered the United States without inspection in 2003. He accrued unlawful presence from 2003 until 2008, when he departed the United States. He is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for accruing 1 year or more of unlawful presence and seeking admission within 10 years of his last departure from the United States.