U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9204666

Date: JULY 6, 2020

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Director of the Nebraska Service Center denied the waiver application, finding that the Applicant had not shown she is in a category of individuals eligible to file for a waiver on Form I-601, including immigrant visa applicants and adjustment of status applicants. On appeal, we affirmed this decision. The matter is now before us on a motion to reconsider.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion because the Applicant has not met this burden.

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The record reflects that, in 2011, the Applicant was issued a Form I-860, Determination of Inadmissibility, and expeditiously removed by U.S. Customs and Border Protection (CBP), who canceled her visa/border crossing card. The Applicant states that she is not filing for permanent residence or an immigrant visa and that she submitted a waiver application because after CBP revoked her nonimmigrant visa, her application for another nonimmigrant visa was denied.. The Applicant submitted a 2018 U.S. Department of State worksheet indicating she had been refused a nonimmigrant visa.

In our prior decision, incorporated here by reference, we concluded that the Director did not err in denying the waiver. The Director cited 8 C.F.R. § 212.7(a)(1), which requires that the Form I-601 be submitted in accordance with the form's instructions, which carry the force of regulation. 8 C.F.R. § 103.2(a). The form's instructions provide, in pertinent part, that the Form I-601 may be filed by a foreign national if that individual is an applicant for an immigrant visa, is outside the United States, has had a visa interview with a consular officer, and was found inadmissible during that interview.

We noted that the Applicant has only applied for a nonimmigrant visa. She has not applied for an immigrant visa and had a visa interview with a consular officer who determined that she is inadmissible. In addition, she has not applied for a K or V nonimmigrant visa or to adjust status to

that of lawful permanent resident. A waiver application serves the purpose of removing the inadmissibility bar to allow for approval of an immigrant visa or one of these applications. As that purpose cannot be served in this case, the waiver application was properly denied.

On motion, the Applicant reiterates her statement on appeal that she has not applied for an immigrant visa and is solely requesting that any grounds of inadmissibility be removed so that she can reapply for a nonimmigrant visa. The Applicant explains that she is seeking to remove the inadmissibility grounds off her record so that she may enter the United States in a lawful manner and she is not aware of any other form or process to do so.[1]

The Applicant has not established our decision was based on an inaccurate application of law or USCIS policy. Nor has she established that our decision was incorrect based on the evidence in the record of proceeding. As we explained in our decision to dismiss the appeal, because the Applicant has applied for a nonimmigrant visa, rather than an immigrant visa or a K or V nonimmigrant visa, she may not apply for a waiver of inadmissibility by filing the Form I-601. If she does require a waiver of inadmissibility to obtain a nonimmigrant visa, she must submit a request for a waiver under section 212(d)(3)(A) of the Act with the U.S. Department of State when applying for a visa.[2]

The Applicant has not demonstrated that our prior decision was incorrect based on the record before us. Accordingly, the Applicant's waiver application remains denied.

ORDER: The motion to reconsider is dismissed.

[1] It is not clear from the record whether the Applicant is subject to any ground of inadmissibility at this time. We note that the Applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act for her prior removal as more than 5 years have passed since her expedited removal from the United States.

[2] Section 212(d)(3)(A) of the Act provides that an individual applying for a nonimmigrant visa who is known or believed by the consular officer to be inadmissible "may, after approval by the [Secretary of Homeland Security] of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant. . . ." *See also* 9 FAM 305.4-3.