U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9822229

Date: OCT. 1, 2020

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if the Applicant is applying for an immigrant visa or adjustment of status and has been found inadmissible under the Act.

The Director of the Nebraska Service Center denied the Form I-601, concluding that the U.S. Department of State (DOS) had not yet made an inadmissibility finding as required for consular processing. On appeal, the Applicant argues that a DOS inadmissibility finding for the current immigrant visa application is not required prior to seeking a waiver of inadmissibility. In support, the Applicant submits two untranslated documents from the U.S. embassy in Ciudad Juarez, Mexico, and various DOS documents.

The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

Prior to the pending application, the Applicant was found inadmissible for unlawful presence, under section 212(a)(9)(B)(i)(I) of the Act, by a DOS consular officer in 2014.[1] The 2014 immigrant visa application was terminated in 2016. In 2019, the Applicant filed a new immigrant visa application. In conjunction with the new application, but prior to his scheduled interview at the consulate, the Applicant filed a Form I-601. The instructions for Form I-601 state:

> If you are an applicant for an immigrant, K, or V nonimmigrant visa (and you are outside the United States, have had a visa interview with a consular officer, and during the interview, you were found inadmissible,) or you are an applicant for adjustment of status to lawful permanent residence… you may file this application to obtain relief from … The 3-year or 10-year bar due to previous unlawful presence in the United States (INA section 212(a)(9)(B)).[2]

[1] We note that a 2016 letter from DOS to the Applicant indicates his unlawful presence inadmissibility under section 212(a)(9)(B) of the Act elapses in September 2020.

[2] *Instructions for Application for Waiver of Grounds of Inadmissibility,* https://www.uscis.gov/i-601.

Therefore, if requesting an immigrant visa an individual can only file a Form I-601 there has been a inadmissibility finding made by DOS on the current visa application.

The Applicant argues that since consular officers found him inadmissible for unlawful presence pursuant to his 2014 application, he is eligible to file a Form I-601 without an inadmissibility finding in his 2019 application. However, since the prior application was terminated and was not reopened, in order to file a Form I-601, a new inadmissibility finding must be made by DOS. As this has not yet been done, we agree with the Director that, because he is requesting an immigrant visa, the Applicant requires a new inadmissibility finding by DOS before he can file a Form I-601. Thus, this Form I-601 application must remain denied.

ORDER: The appeal is dismissed.