



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

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

In Re: 16051686

Date: SEP. 14, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Nigeria, has applied for an immigrant visa and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The Director of the Nebraska Service Center (the Director) denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), as a matter of discretion, determining that even if the section 212(h) waiver application were granted, the Applicant would remain inadmissible, because in addition to being inadmissible for committing a crime involving moral turpitude (CIMT), a U.S. Department of State (DOS) consular officer (consular officer) had also found that the Applicant was inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act for falsely claiming U.S. citizenship, a ground of inadmissibility for which there is no waiver. On appeal, the Applicant submits a brief and a new statement and asserts her eligibility for the waiver.

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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A noncitizen convicted of (or who admits having committed, or who admits committing acts which constitute the essential elements of) a CIMT (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A)(i) of the Act.

Individuals found inadmissible under section 212(a)(2)(A)(i) of the Act may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a discretionary waiver is available if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the noncitizen has been rehabilitated. Section 212(h)(1)(A) of the Act. A discretionary waiver is also available if denial of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse, parent, son, or daughter of the noncitizen

applicant. Section 212(h)(1)(B) of the Act. Finally, if a noncitizen demonstrates their eligibility under section 212(h)(1)(A) or (B) of the Act, U.S. Citizenship and Immigration Services (USCIS) must then decide whether to exercise its discretion favorably and consent to the noncitizen's admission to the United States. Section 212(h)(2) of the Act.

Section 212(a)(6)(C)(ii) of the Act provides that a noncitizen who, on or after September 30, 1996, falsely represents to be a citizen of the United States for any purpose or benefit under the Act or any other Federal or State law is inadmissible. There is no waiver for this ground of inadmissibility. Section 212(a)(6)(C)(iii) of the Act.

II. ANALYSIS

The record indicates that the Applicant departed the United States and returned to her native Nigeria to obtain a U.S. immigrant visa from DOS after USCIS' approval of her Form I-601A, Application for Provisional Unlawful Presence Waiver. Subsequent to her interviews with a consular officer, her visa application was denied after the DOS determined that she was inadmissible under sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(ii) of the Act for having been convicted of a CIMT and for falsely claiming U.S. citizenship, respectively. The Director of the Nebraska Service Center thereafter denied the Form I-601 for the Applicant's section 212(h) waiver as a matter of discretion, finding that even if it were approved and her inadmissibility arising from her CIMT conviction waived, the Applicant would remain inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act for which there is no waiver available.

The Applicant argues on appeal that the Director should have considered and granted her waiver request under section 212(h) of the Act independent of the consular officer's finding that she was inadmissible under 212(a)(6)(C)(ii) of the Act. She asserts that she intends to challenge the consular officer's finding and contends that she did not make a false claim to U.S. citizenship, but first requests a waiver under section 212(h) of her inadmissibility for having been convicted of a CIMT.

Because the Applicant is outside the United States seeking an immigrant visa, it is the DOS that makes the final determination concerning admissibility and eligibility for a visa, not USCIS. Here, the record indicates that during her consular interviews on her immigrant visa application in 2019, the Applicant stated that she had previously sought and obtained admission into the United States at the U.S./Canada border in 2003 and indicated that she presented her Maryland driver's license at that time while two others with her showed their U.S. passport or birth certificate. She also admitted that an immigration officer at the port of entry specifically asked her whether she was a U.S. citizen; however, when asked multiple times during two separate consular interviews what her response to the question was, the Applicant did not answer. Accordingly, the DOS determined the Applicant to be inadmissible for making a false claim to U.S. citizenship. While we acknowledge the Applicant's argument that we should still adjudicate a section 212(h) waiver application to waive her inadmissibility arising from her CIMT conviction, no purpose would be served in adjudicating the application because the DOS' finding of the Applicant's inadmissibility under section 212(a)(6)(C)(ii) of the Act, a ground for which there is no waiver available, would still remain. Thus, the Director did not err in denying the waiver application as a matter of discretion. The waiver application remains denied.

ORDER: The appeal is dismissed.