U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20811767

Date: JUN. 08, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of South Korea currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). 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 of the Los Angeles Field Office denied the application, concluding that since the Applicant is statutorily ineligible to adjust status under section 245(a) of the Act, 8 U.S.C. § 1255(a), adjudicating the Form I-601, Application for Waiver of Grounds of Inadmissibility, would serve no purpose. The matter is now before us on appeal.

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

I. LAW

Under Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), any noncitizen who, by fraud or willfully misrepresenting a fact, seeks to procure (or has sought to procure or has procured) a visa, admission to the United States, or any other benefit provided under the Act is inadmissible. Section 212(i) of the Act provides that USCIS may waive this ground of inadmissibility in its discretion if refusal of admission would cause extreme hardship to the noncitizen's U.S. citizen or LPR spouse or parent.

Under section 245(a) of the Act, a noncitizen who was inspected and admitted into the United States may have their status adjusted to that of an LPR if, among other requirements, they are eligible to receive an immigrant visa and are admissible to the United States for permanent residence.

Section 245(c) of the Act, 8 U.S.C. § 1255(c), states in relevant part that this adjustment of status is not available to a noncitizen who has failed (other than through no fault of their own or for technical

reasons) to continuously maintain a lawful status since entering the United States, unless that noncitizen is an immediate relative of a U.S. citizen as defined in section 201(b) of the Act, 8 U.S.C. § 1151(b). An exception to this disqualification exists under section 245(i) of the Act, 8 U.S.C. § 1255(i), for noncitizens who were physically present in the United States on December 21, 2000, and are the beneficiaries of immigrant visa petitions or labor certification applications filed on or before April 30, 2001.

II. ANALYSIS

The record indicates that the Applicant last entered the United States on August 2, 2010, as a B-2 nonimmigrant visitor. On April 14, 2011, she changed nonimmigrant status to F-1 student, attending four different schools for language and theological education through 2016. On August 23, 2010, the Applicant's father, an LPR, filed a Form I-130, Petition for Alien Relative, on her behalf. The Form I-130 was approved on April 3, 2012.

On January 11, 2016, the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, to adjust her status to that of LPR. On May 12, 2021, the Director of the Los Angeles Field Office denied her application, finding that she was not eligible to apply for adjustment of status under section 245(a) of the Act because she had failed to maintain lawful status in the United States and was not an immediate relative as defined in section 201(b) of the Act, since her father is not a U.S. citizen. The Director further noted that the Applicant had failed to establish eligibility under section 245(i) of the Act. On October 8, 2021, the Director dismissed the Applicant's motion to reopen and reconsider the I-485 denial.

On August 3, 2021, the Applicant filed a Form I-601 requesting a waiver of her inadmissibility pursuant to section 212(i) of the Act.[1] On October 8, 2021, the Director denied the application, finding that since the Applicant was statutorily ineligible to adjust status under section 245(a) or 245(i) of the Act, adjudicating the Form I-601 would serve no purpose. On appeal, the Applicant asserts that she is eligible for a waiver of her inadmissibility.

A waiver application serves the purpose of removing the inadmissibility bar to adjustment of status or issuance of an immigrant visa. *See* 8 C.F.R. § 212.7(a)(1). As noted by the Director, even if the Applicant were eligible for a waiver of inadmissibility, she would remain statutorily ineligible for adjustment of status under section 245(a) of the Act due to her failure to maintain lawful status in the United States. Since the Form I-130 filed on the Applicant's behalf was not filed by April 30, 2001, and there is no indication that she meets the physical presence requirement, she also does not qualify to adjust status under section 245(i) of the Act. Since the instant waiver application cannot cure the Applicant's ineligibility for adjustment of status, no purpose would be served in evaluating her eligibility for a waiver under section 212(i) of the Act. The matter remains denied as a matter of discretion.

ORDER: The appeal is dismissed.

[1] It is noted that the Applicant also filed Form I-601 twice on June 8, 2021, and the two applications were denied and rejected, respectively. As these applications are not the subject of this appeal, we will not address them further.