



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

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

In Re: 17098656

Date: MAY 10, 2022

Appeal of Tampa, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or willful misrepresentation of a material fact.

The Director of the Tampa, Florida Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, concluding that the record did not establish that the Applicant had an underlying Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment of status application), at the time she filed her waiver application. 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; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). This office reviews 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

Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act.

II. ANALYSIS

The record reflects that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact, and the Applicant does not contest this finding. The Director did not address the merits of the Applicant's waiver application, but rather found that the Applicant's adjustment of status application was denied and therefore he did not have the authority to

grant the waiver application absent a pending adjustment of status application. On appeal, the Applicant requests approval of her underlying adjustment of status application, arguing that the Director's denial of her Form I-485 constituted an inconsistent application of law and regulations.¹ She further argues that the Director's failure to consider the merits of her waiver application constituted error.

The record reflects that the Applicant's adjustment of status application, filed on September 18, 2019, was denied for lack of jurisdiction on December 10, 2020, and there is no indication in the record that the Applicant has filed a motion to reopen or reconsider the denial of her Form I-485.² As the Applicant was found ineligible to adjust status on a basis unrelated to her inadmissibility and waiver application, and she no longer has a pending, underlying adjustment of status application, we find that no purpose would be served in adjudicating her waiver application. We will therefore dismiss the appeal of the denial of her Form I-601.

ORDER: The appeal is dismissed.

¹ We do not have jurisdiction over the Form I-485, as there is no appeal of the denial of an application for adjustment of status under section 245 of the Act. Any evidence concerning whether the Applicant merits this relief or is otherwise eligible to adjust status must be addressed to the Director in the form of a motion to reopen and/or reconsider the denial of her Form I-485.

² The Applicant was placed in removal proceedings on [] 1994, and ordered deported *in absentia* by an Executive Office for Immigration Review (EOIR) immigration judge on [] 1994. The record reflects that the Applicant's Form I-485 was denied by the Director for lack of jurisdiction, as the Applicant is under the jurisdiction of the EOIR because her removal proceedings have not been terminated and she is not an arriving alien, and only the EOIR has jurisdiction to grant or deny her Form I-485 under 8 C.F.R. § 1245.2(a)(1). The record also reflects that another Form I-485 application filed by the Applicant was administratively closed by USCIS in February 2019 for the same reason.