



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

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

In Re: 22702504

Date: OCT. 11, 2022

Appeal of Atlanta Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) and he seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for misrepresentation of a material fact. U.S. Citizenship and Immigration Services may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Atlanta Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive the Applicant's inadmissibility ground. The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen spouse, his only qualifying relative. The Director also determined the Applicant required the waiver of another inadmissibility ground that we discuss below. On appeal, the Applicant submits a brief and additional evidence, asserting their eligibility.

The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the matter as moot.

In 2014, the Applicant was married in his home country. In May 2016 he filed a nonimmigrant visa application with the U.S. Department of State (DOS) claiming a status of married. Soon afterwards, the Applicant petitioned for and received a Decree Nisi Dissolution of Marriage on [REDACTED] 2016. The document reflects the Decree Nisi "shall be made absolute after Three Months from the date decree unless sufficient cause is shown in the Contrary." The Applicant did not amend his marital status at his nonimmigrant visa interview on July 12, 2016, as three months had not passed since the Decree Nisi issuance and his divorce was not yet finalized. DOS approved the visa on July 13, 2016, he received the Decree Absolute terminating his marriage on [REDACTED] 2016, then entered the U.S. in October of the same year.

According to the DOS Reciprocity Schedule for Nigeria, as it relates to divorce certificates, the High Court of Justice is the issuing authority for divorce certificates, and the document names are a Decree Nisi and Decree Absolute. *U.S. Visa: Reciprocity and Civil Documents by Country, Nigeria*, Travel.State.Gov (Oct. 11, 2022), <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity->

and-Civil-Documents-by-Country/Nigeria.html. According to the Reciprocity Schedule, parties in Nigeria file paperwork with the court where a trial ensues, and it explains the process as follows:

At the end of the trial, the Court may grant or refuse the Divorce. Where the divorce is granted, the order is temporary and is called a Decree Nisi. There is a three-month period allowed in the event of reconciliation between the couple. At the end of the three months, if the parties have not reconciled, then the divorce decree will automatically become absolute, and a Decree Absolute is issued. At this point, the legal bonds of marriage are permanently severed unless the couple remarries.

*Id.* Nigerian divorce therefore involves three waypoints: (1) the issuance of a Decree Nisi; (2) the passage of three months without a reconciliation in which the decree becomes absolute; and (3) the issuance of a Decree Absolute. The issue in the present case, is whether the Applicant misrepresented himself as married on the date of his nonimmigrant visa interview; not whether he was eligible to marry another person on that same date. Admittedly, this particular situation involves a gray area in the law, and precedent does not appear to exist to provide clarity. We therefore look to the plain language of DOS' official guidance on this issue from the Reciprocity Schedule. According to this resource, when the Applicant attended his nonimmigrant visa interview, the dissolution of his marriage was not yet finalized meaning he was technically still married to his previous spouse. It was not final until the point at which "a Decree Absolute is issued," which was on [REDACTED] 2016. It therefore does not appear that the Applicant misrepresented a material fact claiming he was married at his visa interview, and we withdraw the Director's determination to the contrary.

The Director also concluded the Applicant required a waiver for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). However, we note this inadmissibility ground does not apply to the Applicant because the record does not establish that he departed from the United States after accruing the requisite amount of unlawful presence. We therefore withdraw the Director's determination that the fact that the Applicant overstayed his period of authorized stay associated with his nonimmigrant status subjects him to the unlawful presence inadmissibility ground.

However, we note one other possible issue the Director may wish to address regarding the Applicant's foreign divorce decree documentation, and which the Applicant should be prepared to address in any future filings. The Reciprocity Schedule lists the only appropriate issuing authority for divorce certificates as "The High Court of Justice" and the only "Issuing Authority Personnel Title" as "Judge." On the Applicant's Decree Nisi and Decree Absolute, the issuing authority appears to be "the High Court of [REDACTED] Judicial Division Holden at [REDACTED] and the documents are certified by [REDACTED]" with the title of "Registrar." The documents appear to lack any indication that the issuing authority's title was that of a judge as the Reciprocity Schedule requires. The documents in the record are photocopies and the original versions may reveal additional information regarding the issuing authority's title to ensure these documents satisfy the Reciprocity Schedule requirements. The failure to satisfy the Reciprocity Schedule could affect the Applicant's ability to demonstrate through documentation that he was eligible to marry in the United States.

**ORDER:** The appeal is dismissed.