U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21930916

Date: SEPT. 12, 2022

Appeal of New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant is a native and citizen of El Salvador and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C.§ 1182(i), to adjust status to that of a lawful permanent resident.

The New York Field Office Director denied the Form I-601, concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, and that the record did not establish that his U.S. citizen spouse would face extreme hardship if he was removed from the United States or if she were to accompany him to reside in his home country. On appeal, the Applicant argues that the Director erred. 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.

Any foreign national 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. The Director indicated that when the Applicant entered the United States without inspection in March 2003, he falsely claimed to be a Mexican citizen for the purpose of avoiding being removed to El Salvador. The Director determined that this resulted in the Applicant being inadmissible for willfully misrepresenting a material fact under section 212(a)(6)(C)(i) of the Act.

However, those actions do not reflect that the Applicant sought to procure a visa, admission into the United States, or a benefit under the Act.[1] Avoidance of return to one country versus another, or a claim of one nationality versus another, does not constitute such an attempt. Moreover, attempting to avoid being returned to El Salvador also does not qualify as a request for other documentation, such as a re-entry permit, a refugee travel document, a border crossing card, or a U.S. passport. 8 *USCIS Policy Manual, supra*, at 3.B(2). We therefore find that the Applicant is not inadmissible under section

[1] Illustrative examples of a benefit under the Act include requests for extension of nonimmigrant stay, change of nonimmigrant status, permission to re-enter the United States, waiver of the two-year foreign residency requirement, employment authorization, parole, voluntary departure, adjustment of status, and requests for stay of deportation. *See* 8 *USCIS Policy Manual* 3.B(3), https://www.uscis.gov/policymanual.

212(a)(6)(C)(i) of the Act based on this event. As this is the sole inadmissibility ground the Director identified in their decision, the Applicant does not require a waiver based on the Director's current inadmissibility finding. Because the Applicant is not inadmissible as identified in the Director's decision, we are dismissing the appeal as moot.

ORDER: The appeal is dismissed.