



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

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

In Re: 24726961

Date: MAR. 07, 2023

Appeal of San Fernando Valley, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

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

The Director of the San Fernando Valley, California Field Office denied the application, concluding that the record did not establish that the Applicant was statutorily eligible to apply for permission to reapply for admission, even if a waiver was granted in her case. The matter is now before us on appeal. The Applicant argues the Director erred in finding her ineligible for the waiver.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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 appeal.

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 discretionary 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.

However, section 212(a)(9)(C)(i) of the Act also provides that any noncitizen who has been ordered removed and who subsequently enters or attempts to reenter the United States without being admitted is inadmissible. Noncitizens found inadmissible under section 212(a)(9)(C)(i) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act, which provides that inadmissibility shall not apply to a noncitizen who seeks admission more than ten years after the date of their last departure from the United States if the Secretary of Homeland Security consents to their reapplying for admission prior to their attempt to be readmitted. A noncitizen may not apply for permission to reapply unless they are outside the United States and their last departure from the United States was at least ten years ago. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *see also*

Matter of Briones, 24 I&N Dec. 355 (BIA 2007); *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

The following facts are not in dispute. On or around May 9, 1997, the Applicant attempted to enter the United States at San Ysidro, California, where she presented a valid entry document – belonging to someone else. She was subsequently ordered removed under section 235(b)(1) of the Act and removed to Mexico on [] 1997. Later that same month, the Applicant entered the United States without inspection or admission and is currently in the United States. The Applicant is therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed and subsequently reentering the United States without being admitted.

The Applicant is currently in the United States, and she has not remained outside of the country for at least 10 years, as required. Section 212(a)(9)(C)(ii) of the Act; *Matter of Torres-Garcia, supra*. She is therefore currently statutorily ineligible for permission to reapply for admission to the United States. Thus, the Director did not err in denying the waiver application as a matter of discretion. No purpose would be served in considering hardship to the Applicant's spouse and adjudicating the waiver request for fraud or willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act because the Applicant will remain inadmissible under section 212(a)(9)(C)(i) of the Act. Therefore, the waiver application remains denied.

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. The Applicant has not met this burden.

ORDER: The appeal is dismissed.