



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

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

In Re: 16692216

Date: APR 18, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa with the U.S. Department of State (DOS) and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence.

The Director of the Nebraska Service Center denied the application, concluding that the Applicant had not submitted the waiver application according to the instructions to the form, and was therefore ineligible to file the waiver. *See* 8 C.F.R. § 217.7(a)(1). Specifically, the record did not establish that the Applicant had been interviewed by a consular officer and found inadmissible.¹ On appeal, the Applicant asserts that the Director erred in denying the waiver application and maintains she is eligible to file the waiver.

The Applicant bears the burden of proof in these proceedings to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

On appeal, the Applicant contests the Director's determination that she erred in filing the waiver application. The Applicant asserts that when she went to the consulate for a visa interview, "after an initial check-in and wait," she was "called up and given [a] letter." She submits a notice from DOS in Spanish that has check marks next to "Exámenes médicos" and "Otros" with handwritten note "waiver I-601." The Applicant also asserts that since DOS indicated in its notice that a Form I-601 waiver application was needed, DOS already made a final determination regarding her inadmissibility.

However, our review of U.S. Citizenship and Immigration Services (USCIS) and DOS records does not reflect that DOS has made a final inadmissibility determination and the Applicant has not provided evidence of an inadmissibility determination by DOS. Because the Applicant resides overseas and applied for an immigrant visa, DOS makes the final determination regarding her inadmissibility with respect to the visa. The DOS notice is in Spanish and not accompanied by a certified

¹ The form instructions provide that a foreign national outside the United States who is seeking an immigrant visa must have a visa interview with a consular officer and determined to be inadmissible and eligible to file the waiver application. *See* "Who May File Form I-601?" on page one of the Form I-601 instructions, which may be viewed at <https://www.uscis.gov/i-601>.

English translation, and the record, as currently constituted does not establish that the notice includes a finding of inadmissibility.

Therefore, we agree with the Director that the Applicant is not eligible to file the waiver and did not file the waiver application in accordance with USCIS form instructions. Every form, benefit request, or other documents submitted to USCIS must be executed in accordance with statute, regulation, or form instructions. 8 C.F.R. § 103.2(a)(1). We conclude that the Applicant has not done so here and thus will dismiss the appeal.²

ORDER: The appeal is dismissed.

² We further note that the records indicate in December 2020, the Applicant appeared for another visa interview in which the consular officer determined that she had arrived without her medical documentation for the second time. The consular officer also determined that since the application had been pending for over a year that she would need to pay a new visa fee. The Applicant indicated she was unable to pay the requisite fee. DOS refused the visa application due to the lack of required documentation.