



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

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

In Re: 23052024

Date: NOV. 10, 2022

Appeal of Cleveland, Ohio Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant applied to adjust status to that of a lawful permanent resident as an approved Violence Against Women Act (VAWA) self-petitioner.¹ She seeks a waiver of inadmissibility under section 212(a)(9)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(iii), for having entered the United States without inspection after having been removed from the United States.

The Director of the Cleveland, Ohio Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application). The Director concluded that the Applicant did not establish her statutory eligibility for this waiver, because she had not demonstrated a connection between her subjection to extreme cruelty by her U.S. citizen spouse and her removals, departures, entries, and attempted entries to the United States. This conclusion was based, in part, on a determination that the Applicant provided “no evidence” of her relationship to her spouse prior to their marriage in 2001.

On appeal, the Applicant objects to the Director’s observation that none of the previously submitted evidence addresses her relationship with her spouse prior to their marriage. In addition, she submits supplemental evidence, which includes a more detailed affidavit describing the full history of the relationship, an updated opinion from a licensed social worker, and statements from persons familiar with the relationship since 1998 or 1999. She maintains that the new evidence is sufficient to establish that “each and every entry and subsequent departure was either at the behest of her [U.S. citizen spouse] or as a direct result of the abuse and extreme cruelty meted out by him.”

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). We review 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 remand the matter to the Director for additional review and the entry of a new decision.

¹ The record includes a May 2017 approval notice, indicating that U.S. Citizenship and Immigration Services (USCIS) approved the Applicant’s Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, with a May 6, 2016 priority date.

Section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 year, or has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible. Inadmissibility pursuant to section 212(a)(9)(C)(i) of the Act may be waived pursuant to section 212(a)(9)(C)(iii) for VAWA self-petitioners if there is a connection between the noncitizen's battery or subjection to extreme cruelty and the noncitizen's removal, departure from the United States, reentry or reentries into the United States, or attempted reentry into the United States. The Applicant does not contest her inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, which is supported by the record.

As noted, the Director concluded that the Applicant did not establish her statutory eligibility for a waiver of this inadmissibility under section 212(a)(9)(C)(iii) of the Act, in part based on a determination that the record included "no evidence" of her relationship with her spouse prior to their marriage in 2001. We agree with the Applicant that this determination is not supported by the record, which includes, among other evidence, the Applicant's statement that her spouse's violence and excessive drinking resulted in her initial decision to depart the United States and return to Mexico in 2000. Further, as noted, the Applicant has submitted additional relevant evidence in support of the appeal, including additional details regarding the circumstances of her entries, attempted entries, and departures from the United States, and an explanation for a perceived inconsistency in her prior testimony.

The record does not indicate that the Director has reviewed the newly submitted documentation before forwarding the appeal to our office. Further, as discussed, the Director's conclusion that the Applicant's previous submission contained "no evidence" in support of her claim that she is eligible for the requested waiver is not supported by the record. We thus find it appropriate to remand the matter for the Director to determine in the first instance if the Applicant has established eligibility for the benefit sought. On remand, the Director is instructed to consider all evidence provided in support of the Applicant's claim that there was a connection between the extreme cruelty and abuse inflicted by her U.S. citizen spouse, and her entries to and departures from the United States between 1999 and 2004. The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.