



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

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

In Re: 22739084

Date: SEP. 22, 2022

Appeal of Orlando, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant applied to adjust his status to that of a lawful permanent resident and seeks a waiver of inadmissibility. He denies fraudulently obtaining his U.S. entry visa in 2012 and alternately seeks to waive the alleged inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i).

The Director of the Orlando, Florida Field Office denied the waiver application. The Director found the Applicant inadmissible as charged and ineligible for a waiver because he did not demonstrate that denial of his admission would cause “extreme hardship” to his U.S. citizen spouse. On appeal, the Applicant argues that the Director insufficiently detailed the fraud allegation and disregarded evidence of potential hardship to his spouse.

The Applicant bears the burden of demonstrating admissibility to the United States and eligibility for the requested waiver. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we find that the Applicant received insufficient notice of his alleged inadmissibility. We will therefore withdraw the Director’s decision and remand the matter for entry of new decision consistent with the following analysis.

I. LAW

Noncitizens generally cannot gain admission to the United States if they obtained - or attempted to obtain - visas, admission, or other U.S. immigration benefits by fraud or willful misrepresentation of material facts. Section 212(a)(6)(C)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS), however, may waive this inadmissibility ground if noncitizens demonstrate that denials of their admission would cause extreme hardship to their U.S. citizen or lawful permanent resident spouses or parents. Section 212(i)(1) of the Act. Waiver applicants must also show that they merit favorable exercises of discretion. *Id.*

Before deciding waiver applications, adjudicators must verify the applicants’ inadmissibility. 9 *USCIS Policy Manual* 3(A), <https://www.uscis.gov/policy-manual>. If planning to deny applications based on material derogatory information that the applicants are unaware of, adjudicators must first advise them of the information and afford them opportunities to respond. 8 C.F.R. § 103.2(b)(16)(i).

Also, adjudicators must generally base determinations of statutory eligibility on information disclosed to applicants. 8 C.F.R. § 103.2(b)(16)(ii).

II. ANALYSIS

The Applicant, a 29-year-old native and citizen of Vietnam, said he learned of the fraud allegation against him in December 2020 in the Director's written request for additional evidence (RFE) regarding his adjustment application. The RFE alleged the Applicant's inadmissibility "for Non-Immigrant Visa Fraud" and afforded him about three months to file a waiver application. The RFE did not describe any visa-related misrepresentation or outline evidence of the alleged fraud.¹

The Applicant filed a prior adjustment application in 2013. The record indicates that, during those proceedings, USCIS also did not inform the Applicant of details or evidence of his purported 2012 fraud. USCIS denied the 2013 adjustment application on grounds other than fraud. Before the denial, the Applicant signed a sworn statement during his adjustment interview indicating that a USCIS officer accused him of fraudulently obtaining his U.S. visitor's visa in 2012. But the statement does not indicate that the officer clearly notified the Applicant of a specific misrepresentation or cited evidence of one. The Applicant stated that he knew the U.S. Department of State (DOS) had tried to revoke his 2012 visitor's visa. But the record does not indicate whether DOS sought revocation based on fraud or notified the Applicant of fraud allegations. Thus, the record indicates that, until receiving the RFE, the Applicant did not know specifics of his alleged fraud. The record also indicates that, before denying the waiver application, USCIS did not advise the Applicant of material derogatory information of this purported inadmissibility or afford him an opportunity to rebut it. *See* 8 C.F.R. § 103.2(b)(16)(i).

The record also shows that, contrary to 8 C.F.R. § 103.2(b)(16)(ii), USCIS determined the Applicant's statutory eligibility for the requested waiver based on derogatory information undisclosed to him. The Director's denial informed the Applicant that he purportedly obtained his 2012 visa "via a fraud scheme facilitated by [a DOS] employee." But the Director did not describe the schedule or cite any evidence of the Applicant's misrepresentation or fraud. In the application, the Applicant stated that someone told him that a U.S. consular official illegally approved visas for Vietnamese applicants. But the Applicant stated: "I never sought any special favor from any U.S. official when I applied for my visa. I simply applied in the normal course and was approved. I have not committed any . . . fraud."

Because USCIS did not sufficiently advise the Applicant of his purported inadmissibility, we will withdraw the Director's decision and remand the matter. On remand, the Director should notify the Applicant of the details of his alleged fraud and any evidence supporting it. The Director should also afford the Applicant a reasonable opportunity to respond to the information. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

¹ The Applicant also submits evidence that his attorney tried to obtain additional information about the Petitioner's inadmissibility by sending an email message to the Director's field office through a local organization of immigration attorneys. Counsel stated that he did not receive a response to the message.

III. CONCLUSION

The Director insufficiently advised the Applicant of his alleged inadmissibility and did not afford him a reasonable opportunity to respond to the derogatory information.

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