

United States Court of Appeals  
For the Eighth Circuit

---

No. 21-2551

---

Benjamin Slappendel; Katherine Amerson

*Plaintiffs - Appellants*

v.

Lorne Miller, Associate Director, Nebraska Service Center; John/Jane Doe, Adjudicator; Merrick B. Garland, Attorney General; Alejandro Mayorkas, Acting Secretary of Homeland Security; Tracy Renaud, Director, U.S. Citizenship and Immigration Services

*Defendants - Appellees*

---

Appeal from United States District Court  
for the District of Nebraska - Lincoln

---

Submitted: November 23, 2022  
Filed: November 30, 2022  
[Unpublished]

---

Before LOKEN, MELLOY, and STRAS, Circuit Judges.

---

PER CURIAM.

Benjamin Slappendel and his wife appeal the dismissal of their lawsuit seeking to reverse the denial of his application for an immigrant visa. *See Al-Saadoon v. Barr*, 973 F.3d 794, 800 (8th Cir. 2020) (reviewing the grant of a motion

to dismiss de novo). The district court<sup>1</sup> dismissed for lack of subject-matter jurisdiction because “decision[s] . . . to grant or deny a[n] [immigration] waiver” are unreviewable in these circumstances. *See* 8 U.S.C. § 1182(a)(2)(A)(i)(I), (h); *see also* 8 U.S.C. § 1252(a)(2)(B)(i) (“[N]o court shall have jurisdiction to review . . . any judgment regarding the granting of relief under section 1182(h).”). We affirm the district court’s reasoning but modify the dismissal to be without prejudice. *See County of Mille Lacs v. Benjamin*, 361 F.3d 460, 464 (8th Cir. 2004) (“A district court is generally barred from dismissing a case with prejudice if it concludes subject[-]matter jurisdiction is absent.”).

---

---

<sup>1</sup>The Honorable Robert F. Rossiter, Jr., then United States District Judge for the District of Nebraska, now Chief Judge.