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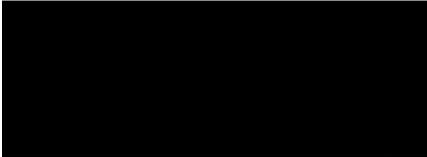
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

NOV 24 2008

IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(d)(11) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(d)(11)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal dismissed as moot.

The applicant is a native and citizen of Canada who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for assisting her daughter to enter the United States in violation of law (alien smuggling). The applicant is the parent of a United States citizen and is the beneficiary of an approved alien relative petition. The applicant seeks a waiver of inadmissibility pursuant to section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11).

The director determined that the reason for smuggling the applicant's daughter into the United States was not for humanitarian purposes, to assure family unity, or in the public interest. The director cited to the waiver provision at section 212(i) of the Act, 8 U.S.C. 1182(i), and determined that the applicant failed to establish a qualifying family member would suffer extreme hardship if she were denied admission to the United States. The director concluded that the record does not provide documentary evidence to establish that the applicant qualifies for admission for humanitarian purposes, to assure family unity, or in the public interest. The applicant's Form I-601, Application for Waiver of Ground of Excludability (now referred to as Inadmissibility), was denied accordingly.

On appeal, former counsel asserts that the applicant was not allowed entry into the United States because of misunderstandings and was then placed in exclusion proceedings. Counsel contends that the Immigration Judge dismissed (terminated) the exclusion proceedings on March 30, 1995. Counsel indicates that the applicant qualifies for a waiver of inadmissibility based on hardship to her daughter and granddaughter, who are both United States citizens. Former counsel indicates that a waiver of inadmissibility should be granted to assure family unity.

Section 212(a)(6)(E) of the Act provides:

(6) Illegal entrants and immigration violators . . .

(E) Smugglers.--

(i) In general.--Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible. . . .

(iii) Waiver Authorized.--For provision authorizing waiver of clause (i), see subsection (d)(11).

The record reflects that on May 11, 1994, the applicant was apprehended in Plattsburgh, New York by a Border Patrol Agent. The former Immigration and Naturalization Service (the Service) issued the applicant a notice to appear in exclusion proceedings before an Immigration Judge to establish that she is admissible to the United States. The notice charges the applicant with being inadmissible under section 212(a)(6)(E)(i) of

the Act for assisting her daughter, a citizen of Canada, to enter the United States knowingly and having prior knowledge of the fact that her daughter was previously refused a visa and that her daughter was going to meet her United States citizen boyfriend at a shopping mall and travel with him to their place of residence in the United States. On March 24, 1995, counsel for both the applicant and the Service signed a joint stipulation to terminate exclusion proceedings. Former counsel then filed a motion to terminate exclusion proceedings based upon this joint stipulation. On March 30, 1995, the Immigration Judge granted the motion to terminate proceedings and ordered that the charge of inadmissibility under section 212(a)(6)(E)(i) of the Act was not sustained. Pursuant to this order, the AAO finds that the applicant is not inadmissible under section 212(a)(6)(E)(i) of the Act.

Furthermore, even if the applicant were found to be inadmissible under section 212(a)(6)(E)(i) of the Act, she would be eligible for a waiver of this ground of inadmissibility under section 212(d)(11) of the Act.¹

Section 212(d)(11) of the Act provides, in pertinent part:

(11) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of . . . an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

Section 212(d)(11) of the Act provides that a waiver of inadmissibility is first dependent upon the applicant showing that she is seeking admission as an immediate relative or immigrant under section 203(a) of the Act. Second, the applicant must show that the individual she encouraged, induced, assisted, abetted, or aided to enter the United States in violation of law was her spouse, parent, son, or daughter and no other individual. If this is established, the Secretary then assesses whether an exercise of discretion is warranted for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

In this case, the applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by her daughter, a naturalized United States citizen. The applicant is, therefore, seeking admission to the United States as an immediate relative. See Section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i). As discussed, the applicant was apprehended by a Border Patrol Agent on May 11, 1994 in Plattsburgh, New

¹ The director assessed the applicant's eligibility for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i). However, section 212(i) of the Act only pertains to waivers of inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact. The waiver provision applicable to this case would be under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11). The director also determined that the reason for smuggling the applicant's daughter into the United States was not for humanitarian purposes, to assure family unity, or in the public interest. Although it can be considered for discretionary purposes, section 212(d)(11) of the Act, does not require an applicant to connect the act of smuggling with humanitarian purposes, family unity, or public interest reasons.

York. The applicant was issued a notice to appear before an Immigration Judge, which charged her with assisting her daughter to enter the United States in violation of law. Therefore, if the applicant were found to be inadmissible under section 212(a)(6)(E)(i) of the Act, she would meet the first two factors for establishing eligibility for a waiver under section 212(d)(11) of the Act.

Additionally, the applicant would merit a waiver of inadmissibility as a matter of discretion for family unification with her daughter, a United States citizen. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The AAO does not find any adverse factors in this case that would warrant an unfavorable exercise of discretion. In regard to the applicant's apprehension for alien smuggling, an Immigration Judge ordered that the charge of inadmissibility under section 212(a)(6)(E)(i) of the Act was not sustained. The applicant has not been charged with any other immigration violations and does not appear to have a criminal record. Upon consideration of the record as a whole, and in balancing the equities in this case, the AAO finds that if the applicant were found to be inadmissible under section 212(a)(6)(E)(i) of the Act, a favorable exercise of discretion would be warranted to assure family unity.

In this case, the applicant does not appear to be inadmissible under section 212(a)(6)(E)(i) of the Act. Therefore, she is not required to file a waiver application for this ground of inadmissibility. Accordingly, the previous decision of the director will be withdrawn and the appeal will be dismissed as moot.

ORDER: The decision of the director is withdrawn, and the appeal is dismissed as moot.