invasion of personal privacy

U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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APR 13 2004

FILE: [redacted] Office: BALTIMORE, MARYLAND Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(6)(E) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(E).

ON BEHALF OF APPLICANT:

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director Baltimore, Maryland, A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed, and the order dismissing the appeal will be affirmed.

The record reflects that the applicant is a native and citizen of El Salvador. The applicant 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 knowingly encouraging, assisting, abetting, aiding any other alien to enter or to try to enter the United States in violation of law. The applicant seeks a waiver of inadmissibility pursuant to section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11) in order to remain in the United States.

The district director concluded that there is no waiver available for an applicant who has been found inadmissible under section 212(a)(6)(E)(i) of the Act and denied the application accordingly. *See District Director Decision* dated November 19, 2001. The decision was affirmed by the AAO on appeal. *See AAO decision,* dated April 17, 2003.

Section 212(a)(6)(E) of the Act provides, in pertinent part, that:

> (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).

Section 212(d)(11) of the Act provides that:

> The Attorney General (now the Secretary of 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 any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and 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.

The record reflects that on April 3, 1984, a Grand Jury Indictment charged the applicant with four counts of violations under 18 U.S.C. § 371 and 8 U.S.C. § 1324(a)(2). On September 4, 1985, the applicant entered into a plea agreement wherein the charges contained in the indictment were dismissed and the applicant pled guilty to one count of "aiding and abetting certain alien to elude examination by Immigration officials, in violation of 18 U.S.C. § 2 and 8 U.SC. § 1325." The record reflects that the "certain alien" was the applicant's sister. The applicant was sentenced to six months imprisonment, suspended for three years, placed on probation with supervision for a period of three years and fined a $25.00 special assessment fee.

On motion counsel argues that the applicant is not inadmissible under section 212(a)(6)(E) of the Act because his final conviction was under 8 U.S.C. § 1325 which does not contain the elements of the offense of alien smuggling. Counsel in her appeal dated December 20, 2001, presented the same argument.

Section 212(a)(6)(E)(i) of the Act describes the basic smuggling activities that will suffice, even in the absence of a criminal conviction, to exclude or deport an alien from the United States. The record of proceeding clearly reflects that the applicant knowingly encouraged and assisted his sister to enter or try to enter the United States in violation of law and therefore the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act. Although 8 U.S.C. § 1325 does not contain the element of the offense of alien smuggling, the applicant was convicted in violation of both 8 U.S.C. § 1325 and 18 U.S.C. § 2.

18 U.S.C. § 2 states:

> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

The applicant's conviction in violation of 18 U.S.C. § 2 and 8 U.S.C. § 1325 shows that he was involved in alien smuggling by aiding and encouraging his sister to enter the United States in violation of law.

Notwithstanding the arguments on appeal, section 212(d)(11) of the Act is very specific and applicable. In the instant case the applicant was not assisting a qualifying family member and therefore no waiver is available to him.

ORDER: The motion is dismissed. The order of April 17, 2003, dismissing the appeal is affirmed.