U.S. Department of Homeland Security
20 Mass, Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PANAMA CITY Date: JAN 10 2007

IN RE: [redacted]

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

ON BEHALF OF APPLICANT: Self-represented

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, Chief
Administrative Appeals Office

DISCUSSION: The Acting Officer in Charge, Panama City, Panama, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a visa to the United States by fraud or willful misrepresentation. The applicant is the son of lawful permanent residents. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his parents.

The acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated April 7, 2005.

The record shows that, on May 23, 1994, the applicant's father filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The Form I-130 listed [redacted] as the applicant's son and derivative beneficiary of the Form I-130. On September 28, 2004, the applicant appeared for an immigrant visa interview during which he testified that [redacted] was his legitimate son and presented a birth certificate that listed him as the biological father of [redacted] After the applicant was requested to present DNA evidence that [redacted] was his biological son, the applicant admitted that [redacted] was not his biological or adopted son and that he had requested his name be listed on the child's birth certificate as the biological father in 1995 with the approval of [redacted] biological mother, who is the applicant's cousin.

On December 15, 2004, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, the applicant contends that what he did was in good faith and, since the child had resided with his family since the age of two, it was a natural instinct to claim [redacted] as his son, and, therefore, he did not attempt to obtain a visa by fraud or willful misrepresentation and should not be denied a waiver. *See Applicant's Affidavit* dated April 28, 2005. In support of the appeal, the applicant submitted only the above-referenced affidavit. The entire record was reviewed and considered in rendering a decision in this case.

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

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The district director found that, because the applicant had attempted to obtain a visa on behalf of his cousin's child by presenting a fraudulent birth certificate and testifying that he was the child's biological father, he was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant contends that he should not be found inadmissible to the United States because he acted in good faith and did not intend to deceive the United States government. He states that [redacted] his cousin's child, came to reside with his family when

[redacted] was two years old and was essentially raised by his parents. He states that, in 1994, after his parents and two siblings obtained lawful permanent resident cards and moved to the United States, [redacted] came to live with him and he continued to raise the child. He states that, with the consent of [redacted] biological mother, in 1995, he "unofficially adopted" [redacted] by obtaining a birth certificate listing him as the biological father. He asserts that when the immigrant visa documentation arrived for him it was his natural instinct to claim [redacted] as his natural child and that his actions are a clear example of the good faith principle in which many U.S. civil and contract laws are based. The applicant also asserts that the denial should not be based on fraud due to the humanitarian reasons behind his actions. However, the record reflects that the applicant knowingly presented a birth certificate that fraudulently listed him as the biological father and testified that he was the biological father of [redacted] It was only after the interviewing officer requested DNA evidence that the applicant admitted that [redacted] was not his biological child and had never been officially adopted.

The AAO finds that the applicant did not attempt to obtain a visa by willfully misrepresenting a material fact or by fraud because whether [redacted] was his biological or legally adopted child is not material to the *applicant's* eligibility for the immigration benefits sought. However, the AAO finds that the applicant is inadmissible pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), as an alien who encouraged, induced, assisted, abetted or aided his cousin, [redacted] to try to enter the United States in violation of law because [redacted] is not entitled to the immigration benefits the applicant sought on his behalf.

The AAO conducts the final administrative review and enters the ultimate decision for USCIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in de novo review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the acting officer in charge does not identify all of the grounds for denial in the initial decision. See Helvering v. Gowran, 302 U.S. 238, 245-246 (1937); see also, Spencer Enterprises, Inc. v. United States, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003).

Section 212(a) of the Act, 8 U.S.C. § 1182(a), provides, in pertinent part:

> (a) Classes of Aliens Ineligible for Visas or Admission
>
> . . . .
>
> (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.
>
> (ii) Special rule in the case of family reunification.-Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1)of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2)

> (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d) of the Act, 8 U.S.C. § 1182(d), provides in pertinent part:

> (11) The Attorney General 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.

An alien who, at any time, knowingly 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. *See* Section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E). The AAO notes that an exception to the section 212(a)(6)(E) ground of inadmissibility is available to eligible immigrants who only aided their spouse, parent, son, or daughter to enter the United States in violation of law. *See* Section 212(a)(6)(E)(ii). There are no indications in the record that the applicant is or should be classified as such.

A section 212(d) waiver is dependent upon a showing that the alien (1) only aided 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; and (2) the alien either, had been admitted to the United States as a lawful permanent resident alien and did not depart the United States under an order of removal, or, is seeking admission as an eligible immigrant.

The record in the instant case reflects that the applicant is seeking admission as an eligible immigrant. However, the record reflects further that the applicant encouraged, induced, assisted, abetted, or aided an individual in entering the United States in violation of law who was not his spouse, parent, son or daughter, but his cousin. The AAO, therefore, finds that the applicant is statutorily ineligible for the exception and waiver to the inadmissibility grounds for smuggling.

The applicant is subject to the provisions of section 212(a)(6)(E) of the Act, which are very specific and applicable. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed.

ORDER: The appeal is dismissed.