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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

#7

[redacted]

FILE: [redacted] Office: [redacted] Date: AUG 2 4 2010

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[redacted]

Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the Field Office Director, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E), for assisting another alien with trying to enter the United States in violation of law. The applicant is seeking a waiver of inadmissibility under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11) in order to reside in the United States.

The field office director concluded that the applicant was ineligible for a waiver because the subject of her conduct was not a spouse, parent, son or daughter, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly.

On appeal, the applicant asserts that her spouse will suffer hardship if she is denied admission to the United States.

Section 212(a)(6)(E) of the Act states, in relevant part:

> (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) of this section.

Section 212(d)(11) States, in relevant 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) of this section 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 such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

A conviction for smuggling is not necessary to render an alien inadmissible under section 1182(a)(6)(E), section 212(a)(6)(E) of the act, [redacted] 1999)(reasoning that the title of the section was non-substantive, and did not describe the full extent of activities that may be regarded as "alien smuggling" or "related to alien smuggling," and were intended to describe activities which would suffice, even in the absence of a conviction, to exclude or deport an alien).

In this case the record contains a *Record of Sworn Statement in Administrative Proceedings*, dated May 6, 2004, in which the applicant admitted that she gave false statements to an immigration officer at Detroit Airport in order to help her brother-in-law gain admission into the United States as a nonimmigrant visitor. The record indicates that the applicant's brother-in-law was an intending immigrant, and thus was attempting to enter the United States in contravention of law.

A section 212(d)(l 1) of the Act waiver of inadmissibility 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.

In the present case, the applicant attempted to smuggler her brother-in-law into the United States. The record clearly establishes that the subject of the applicant's conduct was not a spouse, parent, son or daughter, and as such she is not eligible for a waiver. Therefore, pursuit of the instant application is moot and the appeal must be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(d)(11) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.