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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

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FILE:

Office: FRESNO, CA

Date:

MAR 29 2010

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Fresno, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico 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 having knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter or 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 reside in the United States with his family.

The field office director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative under section 212(h) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, at 4, dated August 4, 2009.

On appeal, counsel states that the applicant is seeking a waiver pursuant to section 212(d)(11) of the Act rather than section 212(h), he merits a waiver under section 212(d)(11) of the Act, and the field office director applied the wrong section of the law. *Form I-290B*, at 2, received September 3, 2009.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, tax returns for the applicant and his spouse, letters of support for the applicant, proof of employment for the applicant, and copies of birth certificates and legal status for several of the applicant's family members. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on April 18, 1999 at the Calexico, California port of entry, the applicant knowingly assisted two of his children in trying to enter the United States with birth certificates not belonging to them. As such, the applicant is inadmissible under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E).

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, in pertinent part, that:

- (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 . . . 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 AAO notes that section 212(d)(11) of the Act is the relevant waiver provision for section 212(a)(6)(E) of the Act, not section 212(h) of the Act as stated by the field office director.

The applicant meets the first part of the waiver as he is seeking adjustment of status as an immediate relative of his U.S. citizen daughter and the individuals he assisted on April 18, 1999 were his son and daughter.

With regard to the discretionary part of the waiver, the record reflects that the applicant's spouse is a lawful permanent resident and they have been married since 1977; and he has a U.S. citizen daughter, a lawful permanent resident daughter, and two U.S. citizen grandchildren. These family members reside in the United States. *Applicant's Statement*, at 5, dated June 17, 2004; *Form I-130 Befitting the Applicant; Birth Certificates for the Applicant's Grandchildren*. The applicant states that he arrived with his spouse in the United States in 1985. *Applicant's Statement*, at 3. The record includes numerous statements detailing the closeness and importance of the applicant to his family.

The record also includes other favorable discretionary factors including the applicant's filing of tax returns, the general hardship to his family members if he were not granted a waiver, and his good moral character as evidence by the submitted letters of support.

The adverse discretionary factors include the applicant's entry without inspection in 1985 and his period of unauthorized stay and employment. Furthermore, the applicant pled guilty on October 20, 1994 to driving while under the influence of alcohol and was sentenced to 90 days in jail with the sentence suspended for 36 months, an \$1100 fine, and 36 months of probation which was revoked for failure to appear and then reinstated and modified. On January 8, 1996, he pled guilty to driving while under the influence of alcohol and was sentenced to 120 days in jail with the sentence suspended for 36 months, a \$1200 fine, and 36 months of probation which was revoked for failure to appear.

While the AAO does not condone the applicant's attempt to bring his children to the United States in violation of U.S. immigration law, the AAO nevertheless finds that the applicant qualifies for a waiver of section 212(a)(6)(E)(i) in its discretion to assure family unity.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.