U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, N.W. MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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#7

[redacted]

DATE: JUN 18 2012 OFFICE: NEW YORK, NY

[redacted]

IN RE: [redacted]

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 PETITIONER:

[redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the Director, New York, New York, and 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 under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(6)(E)(i), for aiding and abetting illegal aliens to elude examination by U.S. immigration officials, and arranging for their illegal entry into the U.S. The applicant seeks a waiver of his inadmissibility pursuant to section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11).

In a decision dated January 21, 2009, the director determined the applicant was inadmissible as an alien smuggler under section 212(a)(6)(E)(i) of the Act, and that he did not qualify for a waiver of his inadmissibility under 212(d)(11) of the Act. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that he is not inadmissible under section 212(a)(6)(E) of the Act. Counsel asserts that although the applicant was convicted for transporting illegal aliens within the United States, this offense does not constitute aiding and abetting the smuggling of aliens for section 212(a)(6)(E)(i) of the Act purposes. Counsel asserts that the director's decision offers no evidence that the applicant was involved in the smuggling of illegal aliens into the U.S. He asserts further that the applicant denies involvement in such activities. In support of his assertions, counsel submits the statement contained on the Form I-290B notice of appeal. Counsel indicates that a brief and/or additional evidence will be submitted within thirty days, however no additional brief or evidence was received by the AAO.

On April 2, 2012, the AAO mailed a Notice of Intent to Deny (NOID) to the applicant and counsel based on a determination that the applicant was inadmissible to the United States under section 212(a)(6)(E)(i) of the Act, and that he was ineligible for a waiver under section 212(d)(11) of the Act. The applicant was afforded 30 days to respond in writing to the issues raised in the NOID and to meet his burden of proof. The AAO received no response to the NOID.

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

> (i) 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.

Counsel asserts that under *Rodriguez-Gutierrez v. INS*, 59 F.3d 504, 509 n.3 (5th Cir. 1995), the applicant's conviction for transportation of aliens within the U.S. does not constitute aiding and abetting the entry of illegal aliens into the U.S. for section 212(a)(6)(E)(i) of the Act inadmissibility purposes. The AAO finds that it is unnecessary to address this issue, as legal case law clearly establishes that aliens who have, 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 the law, are inadmissible under section 212(a)(6)(E)(i) of the Act.

An alien who knowingly participated in a prearranged plan to transport undocumented aliens away from the border after their unlawful entry, has been found to fall within the purview of section 212(a)(6)(E)(i) of the Act. *See Hernandez-Guadarrama v. Ashcroft,* 394 F.3d 674 (9th Cir. 2005); *see also Soriano v. Gonzales,* 484 F. 3d 318 (5th Cir. 2007) (knowingly transporting illegal aliens after entry based on prearranged plan constitutes knowing encouragement and assistance of alien's unlawful entry under section 212(a)(6)(E) of the Act). Section 212(a)(6)(E)(i) of the Act covers an individual "who participates in a scheme to aid other aliens in an illegal entry" even if the assisting individual did not hire the smuggler or was not present at the point of illegal entry. *Soriano v. Gonzales*, 484 F.3d at 321. *See also, Chambers v. Office of Chief Counsel*, 494 F.3d 274, 279 (2d Cir. 2007) (affirming alien smuggling charge where applicant "personally arranged to provide transportation for [the alien] into the United States and purposefully deceived customs officials at the time of his attempted entry").

Immigration service, sworn testimony, and court documentation in the applicant's file reflect that the applicant knowingly assisted, abetted, and aided other aliens to enter the United States in violation of the law. The record contains a Form I-213, Record of Deportable Alien (Form I-213) prepared by U.S. Border Patrol agents on October 6, 1984, stating the applicant departed Colombia on September 21, 1984 by airplane to Mexico City. He subsequently flew to Monterrey, took a train to Matamoros, and came across the bridge in Brownsville. The Form I-213 states further that he is the smuggler of two Colombian women who were apprehended at the airport in Harlingen, Texas, and refers to Form G-166 for more details on the applicant's involvement in a smuggling scheme.

A Form G-166, investigative report prepared by U.S. Border Patrol agents in Harlingen, Texas on October 6, 1984 concludes the applicant was paid to bring illegal aliens into the U.S., and that he knowingly and voluntarily assisted in smuggling the aliens across the international boundary for profit, knowing the aliens did not have documentation to enter or remain in the U.S.[1] The G-166 states the applicant was observed with two female aliens and a child at the Harlingen airport. The aliens departed Colombia on September 25, 1984 and traveled by plane to Mexico City. They stayed at the Plaza Madrid hotel until September 28, 1984, then traveled by plane to Monterrey, and subsequently by bus to Matamoros, Mexico, arriving on September 29, 1984. The aliens met the applicant in Mexico on September 30, 1984, and contracted to pay him $1500.00 per adult and $200.00 for the child to be smuggled into the United States. On October 4, 1984, the aliens were brought by another individual to a hotel in Brownsville, Texas, where the applicant was waiting for them. The aliens then paid the contracted amount of money to the applicant. They also paid the applicant for airline tickets to New York City. The aliens would see the applicant at the Harlingen airport on October 6, 1984, but were advised to ignore him.

A Form G-166A Report of Investigation prepared by U.S. immigration officials on October 17, 1984 outlines the above details of the smuggling scheme, and concludes that the applicant transported undocumented Colombian aliens for a fee previously arranged for in Colombia, to the

[1] The immigration reports and documents contain the full names of the smuggled aliens. The AAO shall not refer to the aliens by name in the present decision.

U.S., where the three Colombians were apprehended. The report states that "the three aliens were part of a load of thirteen aliens smuggled from Cali, Colombia to Brownsville, Texas." The report states further that the applicant was an "arranger/transporter" in the smuggling scheme. In addition, the report states that a material witness affidavit was filed on one of the smuggled aliens.

The record contains an October 6, 1984, sworn affidavit from two of the individuals smuggled into the U.S. stating all of the above facts regarding their departure from Colombia, travel through Mexico and into the U.S., and the applicant's involvement in the smuggling scheme. The record additionally contains a copy of one individual's Form I-213, prepared by immigration officials on October 6, 1984, discussing the details of her entry into the U.S., and stating that she was smuggled into the United States by the applicant.

A Form G-166D, Summary Report of Investigation prepared by immigration criminal investigators on March 6, 1985, concludes that the applicant was an arranger/transporter in the above smuggling scheme. The report states further that the applicant was arrested on October 6, 1984, for transporting aliens and that he pled guilty to the offense and was sentenced. A June 19, 1986, Immigration and Naturalization Service decision denying the applicant's Form I-212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal states that on October 29, 1984, the applicant was "convicted of aiding and abetting certain aliens to elude examination by Immigration officials." The decision states further that the:

> conviction arose from a scheme whereby [the applicant] met a group of aliens in Mexico and arranged for their entry into the United States for a sum of money. Subsequent to their entry [the applicant] again met with them, collected the money and arranged for the purchase of airline tickets to New York City.

The record also contains a Notice of Rule 11(e) Agreement filed with the U.S. District Court, Southern District of Texas, Brownsville Division on October 29, 1984, reflecting that the applicant pled guilty to a criminal information charging him with three counts of knowingly aiding and abetting an alien to elude examination or inspection by immigration officials, in violation of 8 U.S.C. 1325. The applicant was sentenced to 6 months as to each count, to run consecutively for a total of 18 months, execution of sentence suspended for a period of 5 years, and probation without supervision.

It is additionally noted that the applicant's spouse refers to his 1984 conviction in a sworn affidavit dated April 8, 2008, prepared in support of a motion to reconsider the Service's denial of the applicant's adjustment of status and waiver of inadmissibility applications.

Counsel submitted no evidence to counter or discredit the evidence in the record, and the AAO finds that the cumulative evidence establishes the applicant knowingly encouraged, assisted, abetted or aided aliens to enter the United States illegally. The applicant is therefore inadmissible under section 212(a)(6)(E)(i) of the Act.

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

> 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.

The applicant has failed to establish that the individuals he aided to enter the U.S. illegally were immediate family members. Accordingly, the applicant is ineligible for a waiver under section 212(d)(11) of the Act, and the appeal will be dismissed.

In proceedings for an application for waiver of grounds of inadmissibility under the Act, 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.