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

H7

[redacted]

DATE: OCT 0 5 2012 OFFICE: LOS ANGELES, CA [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 in accordance with the instructions on 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 waiver application was denied by the Field Office Director, Los Angeles, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.[1]

The applicant is a native and citizen of Mexico 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 enter the United States. 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 July 28, 2010, the director determined the applicant was inadmissible as an alien smuggler under section 212(a)(6)(E)(i) of the Act. The decision concludes both that the applicant is eligible to file a waiver as the child of a U.S. citizen, and that no waiver is available for his inadmissibility under 212(d)(11) of the Act. The waiver application was denied because the applicant did not show his spouse and children would experience extreme hardship if he were deported. The AAO notes that the director correctly concluded that no waiver was available for the applicant; therefore, we find the director's extreme-hardship analysis in his decision harmless.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(E) of the Act. Counsel asserts that although the applicant was convicted for violating 8 U.S.C. § 1324(a)(1)(B), his offense "was not categorically an alien smuggling offense." *See Form I-290B*, dated August 27, 2010. Counsel also asserts that because the applicant was not prosecuted by a district court at the border, his offense was not an alien smuggling offense as described in the Act. Counsel further asserts that this ground of inadmissibility is not retroactive, and because the applicant's conviction occurred before the Illegal Immigration Reform and Immigrant Responsibility Act was enacted, the applicant is not inadmissible. In support of his assertions, counsel submits his statement on Form I-290B.

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.

Evidence in the record indicates that the applicant was a member of a smuggling ring, and he knowingly and willfully conspired to assist aliens to enter the United States illegally. He transported the aliens to designated locations after their illegal entry. On July 2, 1987, the applicant pled guilty to transporting one illegal alien in violation of 8 U.S.C. § 1324(a)(1)(B) and was sentenced to one year; he served six months in confinement with the remainder of the

[1] The record contains three pending Forms I-290B, Notice of Appeal or Motion (Form I-290B): one dated July 1, 2010 and two dated August 29, 2010. Two of the three forms list the relating application as "I-485/I-601." Moreover, the July 1, 2010 form pre-dates the I-601 denial decision. Counsel makes identical assertions on each form. The AAO will not issue a separate decision for each Form I-290B; therefore, this decision applies to all three appeals.

sentence suspended. He also served two years' probation following completion of the confinement period. *See Judgment and Probation/Commitment Order. U.S. v. Avila-Luna,* No. CR 87-294-AHS (C.D. Cal. Jul. 2, 1987).

Counsel asserts that because the applicant was not prosecuted at the border, his offense was not an alien smuggling offense as described in 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"). 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 AAO further notes that counsel submitted no authority for his argument that prosecution of an alien-smuggling offense must occur at the border. The AAO finds that the applicant's offense falls within the purview of Act; therefore he is inadmissible under section 212(a)(6)(E)(i) of the Act.

Furthermore, the plain language of section 212(a)(6)(E) of the Act clearly shows that it is intended to have retroactive effect because it applies to individuals who have engaged in alien smuggling "at any time." The AAO finds counsel's assertion unpersuasive, as counsel provides no legal authority to support his assertion that section 212(a)(6)(E)(i) ground of inadmissibility cannot be applied retroactively. The AAO finds the applicant inadmissible under section 212(a)(6)(E)(i) of the Act.[2]

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

[2] The record indicates that the applicant may have additional grounds of inadmissibility under the Act. The AAO will not address additional grounds of inadmissibility, because there is no waiver available to the applicant for his inadmissibility under section 212(a)(6)(E)(i) of the Act.

> 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 individual who he aided to enter the U.S. illegally was an immediate family member. 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.