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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: AUG 0 5 2013 Office: ACCRA, GHANA [redacted]

IN RE: Applicant: [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 APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ellen C. Johnson

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Accra, Ghana, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act for alien smuggling. The applicant is married to a lawful permanent resident and a seeks a waiver of inadmissibility pursuant to section 212(d)(11) of the Act in order to reside with her husband and child in the United States.

The field office director found that the applicant is not eligible for a waiver of inadmissibility because she attempted to smuggle a person who is not her spouse, parent, son, or daughter. The field office director denied the application accordingly.

On appeal, the applicant's son, contends that to his knowledge, his mother was not involved in smuggling.

Section 212(a)(6)(E) of the Act provides:

> (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. . . .
>
> (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:

> (11) The Attorney General [now, Secretary, Homeland Security, "Secretary"] 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.

Section 212(d)(11) of the Act provides that a waiver of inadmissibility is first dependent upon the applicant showing that she is seeking admission as an immediate relative or immigrant under section 203(a) of the Act. Second, the applicant must show that the individual she encouraged, induced, assisted, abetted, or aided to enter the United States in violation of law was her spouse, parent, son, or daughter and no other individual. If this is established, the Secretary then assesses whether an exercise

of discretion is warranted for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, the applicant's son, contends on appeal that in June 1996, he was renewing his passport at the U.S. embassy in Nigeria when he was asked about his deceased brother. According to he answered the questions to the best of his knowledge and was told that he needed to sign a paper in order to receive his passport. contends his English was very poor at the time and that he signed the paper out of ignorance and desperation to receive his passport. He contends that his mother was not involved in smuggling, that she cannot do such a thing, and that she has never committed a crime.

After a careful review of the entire record, the AAO finds that the applicant has not met her burden of proving she is admissible to the United States. The record shows that the applicant lived in the United States between 1969 and 1976 pursuant to an F2 visa and gave birth to two sons while living in the United States. The record contains a signed statement from the applicant's son, admitting that he lied to a U.S. Consular Officer on June 12, 1996, and July 30, 1996, when he assisted a friend in impersonating his deceased brother, in the hopes that his friend would obtain a U.S. passport. *Signed Statement from* dated September 5, 1996. According to the signed statement, "My mother, also assisted me by declaring that my friend was her son, who is deceased. *Id.* assertion on appeal that he signed the statement out of desperation and ignorance, and that he has no knowledge that his mother was engaged in smuggling, does not overcome the signed statement in the record. In addition, the AAO notes that the record shows that the applicant applied for a visa which was denied on October 1, 1996, for alien smuggling. There is no indication the applicant contested this finding at the time of the denial. Because there is no independent, competent, objective evidence pointing to where the truth lies, the applicant has not met her burden of proving she is admissible to the United States.

The AAO finds that the applicant attempted to assist an individual in entering the United States in violation of law and is inadmissible for alien smuggling pursuant to section 212(a)(6)(E) of the Act. Because the individual who the applicant assisted was not her spouse, parent, son, or daughter, there is no waiver available for this permanent ground of inadmissibility. Accordingly, no purpose would be served in examining the applicant's eligibility for a waiver of any other grounds of inadmissibility and the appeal will be dismissed.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.