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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JAN 24 2013 Office: GUANGZHOU, CHINA FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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 request 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of China 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 another alien to enter or to try to enter the United States in violation of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen daughter.

The Field Office Director concluded that the applicant was ineligible for a waiver under section 212(d)(11) of the Immigration and Nationality Act because she had assisted both her daughter and her son-in-law to enter the United States in violation of the Act. *See Decision of Field Office Director*, dated March 2, 2012.

On appeal, the applicant contends that although she loaned money to her daughter and son-in-law to travel to the United States, she did not know they would do so unlawfully.

The evidence includes, but is not limited to, statements from the applicant and her daughter. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(E) of the Act provides, in pertinent 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.
>
> . . . .
>
> (iii) Waiver authorized- For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d) of the Act provides, in pertinent 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) 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.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, she bears the burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet her burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

The applicant claims that although she sent money to facilitate her daughter and son-in-law's travel to the United States, she did not know that they would be entering the country unlawfully. She states that her daughter did not tell her that she would be smuggled into the United States because the applicant's health is poor and her daughter feared she could not withstand the shock of such news. The applicant's daughter claims that she did not inform the applicant of her unlawful entry until 2011, after the applicant's immigrant visa application was denied. However, the record contains a sworn affidavit executed by the applicant at a consular interview in 2001, in which she wrote, "I paid 700,000 RMB to my daughter and son-in-law to be smuggled into the USA." This statement indicates that the applicant was aware that her daughter and son-in-law entered the United States unlawfully and that she paid for their trip. Therefore, the AAO finds that the applicant has failed to meet her burden to demonstrate that she is not inadmissible under section 212(a)(6)(E)(i) of the Act.

As noted above, a waiver under section 212(d)(11) of the Act is available only to individuals whose smuggling violations involved encouraging, inducing, assisting, abetting, or aiding a spouse, parent, son, or daughter to enter the United States unlawfully. In the present case, the applicant assisted both her daughter and her son-in-law. In that in-laws are not among the categories of relatives listed in section 212(d)(11) of the Act, the applicant is statutorily ineligible to apply for a waiver of her 212(a)(6)(E)(i) inadmissibility for smuggling her son-in-law into the United States and is permanently barred from entering the United States.

In proceedings for application for waiver of grounds of inadmissibility under section 212(d)(11) of the Act, the burden of proving eligibility is entirely on the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here the applicant has not met that burden and her appeal will be dismissed.

ORDER: The appeal is dismissed.