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

U.S. Citizenship and Immigration Services

DATE: DEC 18 2014 OFFICE: NEBRASKA SERVICE CENTER File:

IN RE: Applicant:

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:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application. The applicant, through previous counsel, appealed the Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion. The motion is granted, and we affirm our prior decision.

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 Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly aided another alien to enter the United States in violation of the law. The Director concluded that the individual the applicant aided was not her spouse, parent, son, or daughter, and denied her Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. We dismissed the applicant's appeal and affirmed the Director's decision.

On motion, the applicant, through counsel, submits various documents, including a statement from her U.S. citizen husband dated August 29, 2014, in which he discusses their efforts to obtain a waiver of the applicant's inadmissibility as well as the educational, emotional, and employment and health-related hardships he and his family have endured because of the applicant's inadmissibility. The applicant also submits articles and reports about violent crime that occurs in Mexico as well as the targeting of U.S. citizens. In addition, the applicant submits a psychological assessment of her spouse dated August 6, 2014.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence to support her claim, the motion to reopen will be granted.

In addition to the evidence described in our previous decision, the record also includes, but is not limited to: statements by the applicant's spouse and daughter; documents concerning identity and relationships; academic, financial, medical, and psychological documents; documents about conditions in Mexico; and photographs. The entire record was reviewed and considered in rendering a decision on the applicant's motion.

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

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

> The Attorney General [now Secretary of Homeland Security] 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 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 record reflects U.S. immigration officials apprehended the applicant at the San Ysidro Port of Entry on February 22, 2003. At the time of the applicant's apprehension, she was driving a vehicle with her daughter, ex-husband's aunt, and ex-husband's minor cousin, who was determined to be an impostor upon presenting a border crossing card that belonged to another individual.

The record also reflects that during an interview with the U.S. Consulate in Ciudad Juarez, Mexico, on October 12, 2012, the applicant explained the circumstances of her apprehension at San Ysidro and admitted to knowingly contributing to the smuggling of an alien, as she knew her ex-husband's cousin was not the child on the border crossing card. Based on the foregoing, a U.S. consular officer found the applicant to be inadmissible for alien smuggling pursuant to section 212(a)(6)(E)(i) of the Act, and we agreed. The applicant does not contest this finding on motion.

The Act makes clear that a foreign national must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act. *See* also 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). *See Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *see also Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). Based on the foregoing, the applicant was correctly found to have engaged in alien smuggling, and thereby, she is inadmissible under 212(a)(6)(E)(i) of the Act. The record does not reflect that the applicant meets the requirements for a waiver of inadmissibility as stated in 212(d)(11) of the Act.

As the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act, she is currently statutorily ineligible to apply for a waiver of grounds of inadmissibility. As such, no purpose would be served in determining whether she warrants a favorable exercise of discretion.

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 motion is granted. The prior decision of the AAO is affirmed.