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



**U.S. Citizenship
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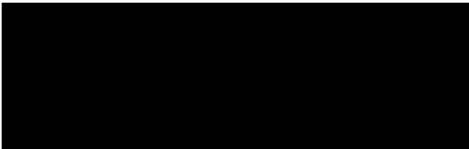
FILE: [REDACTED] Office: NEW YORK, NY

Date: SEP 01 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212 of the
Immigration and Nationality Act, 8 U.S.C. § 1182

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the waiver application is moot.

The record reflects that the applicant is a 37-year-old native and citizen of China. The District Director found the applicant 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 alien smuggling. The applicant is married to a citizen of the United States, and is the beneficiary of an approved Petition for Alien Relative (Form I-130). **The applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.**

The District Director found that the applicant “ha[d] been charged under Section 212(a)(6)(E)(i) of the [Act] as a smuggler of aliens.” *Decision of the District Director*, dated June 2, 2008. The District Director also determined that the applicant did not meet the requirements for a waiver under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11). *Id.*

On appeal, the applicant contends through counsel that he is not inadmissible under section 212(a)(6)(E)(i) of the Act. *See Form I-290B, Notice of Appeal*, filed June 27, 2008. The applicant states that he was convicted of hiring aliens without employment authorization under section 274(a)(3)(A) of the Act, 8 U.S.C. § 1324(a)(3)(A), and not for a smuggling offense. *Id.*

The AAO reviews these proceedings de novo. *See* 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”). The entire record was considered in rendering a decision on the appeal.

The record reflects that the applicant was paroled into the United States pending exclusion proceedings on October 29, 1991. *See* Form I-94. On October 19, 1992, an immigration judge in New York entered an in absentia order of exclusion under sections 212(a)(5)(A)(i) and 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. §§ 1182(a)(5)(A)(i) and (a)(7)(A)(i)(I). *See Decision of the Immigration Judge*. The applicant and his wife married in New York on September 29, 1998. *See Marriage Certificate*. The applicant’s spouse filed a Petition for Alien Relative (Form I-130) on February 14, 2001, and USCIS approved the petition on August 15, 2007. *See Form I-130, Petition for Alien Relative*. The applicant and his wife have three children born in the United States. *See Birth Certificates*.

On June 6, 2006, the applicant was indicted in U.S. District Court for the Western District of Kentucky. *See United States v. Jian Chai Lin*, No. 3:06CR-90-H (W.D.Ky). The Grand Jury charged the applicant with eight counts involving transporting and moving aliens to avoid detection; concealing, harboring, and shielding aliens from detection; conspiracy; and aiding and abetting these charges. *Id.* On December 19, 2006, the U. S. Attorney for the Western District of Kentucky, filed a Superseding Information charging the applicant with knowingly hiring at least ten unauthorized aliens for employment in violation of 8 U.S.C. § 1324(a)(3)(A). *Id.* On March 26, 2007, the

applicant was convicted, pursuant to a plea agreement, of illegal hiring in violation of section 274(a)(3)(A) of the Act, and was sentenced to probation for a term of two years. *Id.* In his plea agreement, the applicant agreed that he knowingly hired for employment ten undocumented aliens to work at his Golden Dragon Buffet restaurant in Radcliff, Kentucky. *Id.* The applicant also provided housing and transportation to and from work for these individuals. *Id.* Counts 1-8 of the Indictment were dismissed on the motion of the United States Attorney. *Id.*

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

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.

8 U.S.C. § 1182(a)(6)(E)(i). “The plain meaning of this statutory provision requires an affirmative act of help, assistance, or encouragement.” *Altamirano v. Gonzales*, 427 F.3d 586, 592 (9th Cir. 2005). Section 212(a)(6)(E)(i) 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 318, 321 (5th Cir. 2007). However, “the civil provision that makes smuggling a deportable offense does not cover mere transportation or harboring of aliens within the United States.” *Hernandez-Guadarrama v. Ashcroft*, 394 F.3d 674, 679 (9th Cir. 2005) (considering analogous ground of removal at section 237(A)(1)(E)(i) of the Act).

Here, the evidence in the record does not establish that the applicant is inadmissible as a smuggler of aliens. Although the applicant pleaded guilty to hiring undocumented workers, and he admitted to housing them and transporting them to and from work, there is no evidence in the record that the applicant “encouraged, induced, assisted, abetted or aided” any of these individuals to enter the United States. Section 212(a)(6)(E)(i) of the Act. There is also no evidence in the record that the applicant transported illegal aliens after entry as part of a smuggling scheme or prearranged plan. *Cf. Soriano, supra* (affirming alien smuggling charge where individual knowingly transported illegal aliens after entry based on prearranged plan); *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”). Additionally, the applicant’s indictment for transporting, moving, concealing, harboring, and shielding aliens from detection does not support a finding of inadmissibility under section 212(a)(6)(E)(i) of the Act. *See Hernandez-Guadarrama, supra*. The AAO therefore finds that the applicant is not inadmissible pursuant to section 212(a)(6)(E) of the Act, and a waiver of inadmissibility is not required.¹ The District Director’s finding of inadmissibility is withdrawn, and the appeal dismissed.

ORDER: The appeal is dismissed.

¹ Because the record indicates that the applicant was ordered excluded in absentia in 1992, he will need to file a Form I-212 Application for Permission to Reapply for Admission.