

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



**PUBLIC COPY**



715

Date: **MAY 20 2011** Office: ACCRA, GHANA

FILE:

IN RE: Applicant:

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact; and section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for attempting to aid and abet an alien to enter the United States at a time and place other than as designated by an immigration officer. The applicant is married to a United States citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The Field Office Director determined that the applicant is statutorily inadmissible to the United States without a chance of a waiver, and even if the applicant could apply for a waiver, the Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 13, 2009.

On appeal, the applicant's husband claims that "all this time that [he] [has] been without [the applicant], [has] been the most painfull [sic], challenging and unbearable [time] of [his] entire life." *Form I-290B*, filed March 6, 2009. Additionally, he claims that if the applicant is refused a visa, "it will mean that [he] will have to leave [his] home, [his] primary abode for the last eight years and the life and comfort [he] [has] been able to establish here in the United States for Nigeria with no guarantee or hope for a job or any means of making a living and providing for [himself] and [his] family's needs." *Id.*

The record includes, but is not limited to, statements from the applicant and her husband, letters of support, a medical document for the applicant's husband, pay stubs and an employment verification for the applicant's husband, household bills, and past due notices. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

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

- (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. . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), provides:

The [Secretary] may, in [her] 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 the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

In the present case, the record indicates that in 2004, the applicant won a diversity visa and listed her current husband's brother as her husband. *See statement by the applicant*, dated May 2, 2008. However, the applicant was not married to her husband's brother. *Id.* During the consular interview with the applicant on May 2, 2008, the applicant claimed that she was "forced" by her husband's family in Nigeria to claim that her husband's brother was her spouse. The AAO finds that the applicant knowingly and willfully attempted to aid and abet her brother-in-law to enter the United States at a time and place other than as designated by Immigration Officers in violation of law.

Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act

as an alien who has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

A section 212(d)(11) of the Act waiver of inadmissibility is dependent upon a showing that the alien (1) only aided 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; and (2) the alien either, had been admitted to the United States as a lawful permanent resident alien and did not depart the United States under an order of removal, or, is seeking admission as an eligible immigrant.

In the present case, the record does not show that the individual the applicant attempted to smuggle was a qualifying relative for purposes of a section 212(d)(11) of the Act waiver of inadmissibility. The AAO, therefore, finds that the applicant's inadmissibility under section 212(a)(6)(E) cannot be waived. Therefore, pursuit of the instant application is moot and the appeal must be dismissed.

**ORDER:** The appeal is dismissed.