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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

#5

DATE: OCT 05 2011 Office: HIALEAH, FL

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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:

[REDACTED]

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 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, Hialeah, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Cuba who previously entered into a marriage in order to obtain immigration benefits for her then-spouse. The applicant 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) April 5, 2009.

On appeal, counsel for the applicant asserts the Field Office Director erred in not finding that the applicant's spouse would experience extreme hardship due to her inadmissibility. *Form I-290B*, received May 18, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record reflects that the applicant married [REDACTED] on July 17, 2004. On March 11, 2005, [REDACTED] filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on his marriage to the applicant. On June 2, 2006 the applicant appeared for the adjustment interview and stated, under oath, that she married [REDACTED] so that he could obtain immigration benefits and, in return, he would pay the expenses of her immigration filings and an additional \$2,000.00. The AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) because the applicant did not misrepresent a material fact in order to procure a visa for herself, but did so in order to procure a visa on behalf of another. *See Matter of M-R-*, 6 I&N Dec. 259 (BIA 1954). However, the AAO finds that the applicant is inadmissible under section 212(a)(6)(E), as her false representations were made in an attempt to assist, aid and/or abet another alien to gain admission to the United States in violation of law. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

Section 212(a)(6)(E) of the Act states, 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.

(ii) Special rule in the case of family reunification. Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

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

Section 212(d)(11) States, in relevant 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) of this section 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 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (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.

A conviction for smuggling is not necessary to render an alien inadmissible under section 1182(a)(6)(E), section 212(a)(6)(E) of the act. *In Re Ruiz-Romero*, 22 I&N Dec. 486, 490 (BIA 1999)(reasoning that the title of the section was non-substantive, and did not describe the full extent of activities that may be regarded as "alien smuggling" or "related to alien smuggling," and were intended to describe activities which would suffice, even in the absence of a conviction, to exclude or deport an alien).

While a discretionary waiver is available for a 212(a)(6)(E) inadmissibility under section 212(d)(11), it is only available if the alien assisted someone who was a spouse, parent, son or daughter. In this case, the applicant assisted [REDACTED] in trying to enter the United States. At the time, [REDACTED] was the applicant's spouse. However, as discussed above, the record reflects that the applicant had entered into the marriage to [REDACTED] for the purpose of evading immigration laws. The AAAO finds that it would run contrary to public policy to consider the applicant's marriage to Mr. [REDACTED]

for the purpose of making a waiver available under section 212(d)(11). Therefore, the AAO does not find the applicant eligible to apply for a waiver under section 212(d)(11), and in any event would deny such a waiver as a matter of discretion based on the fact that she entered into a fraudulent marriage for the purpose of evading immigration laws.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.