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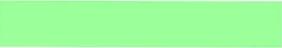
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: **NOV 06 2013**

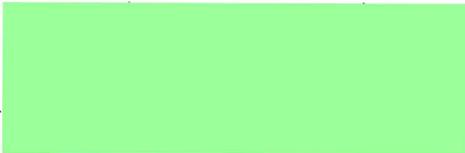
Office: NEBRASKA SERVICE CENTER

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:



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 Nebraska Service Center Director denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India 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 seeking to procure an immigration benefit by fraud or misrepresentation, as well as under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for alien smuggling. The applicant seeks a waiver of inadmissibility in order to immigrate to the United States and reside with his lawful permanent resident wife.

The service center director concluded the applicant was inadmissible under section 212(a)(6)(E) of the Act, determined the applicant ineligible for a waiver under section 212(d)(11), and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, April 1, 2013.

On appeal, counsel contends that the director erred in concluding that the applicant was inadmissible either under section 212(a)(6)(E) or under section 212(a)(6)(C)(i) of the Act, but asserts, in the alternative, that the applicant has established that his inadmissibility would result in extreme hardship to his lawful permanent resident spouse. The record also includes, but is not limited to: counsel's briefs; documentation supporting the applicant's waiver application, as well as records regarding the applicant's last admission to the United States. The entire record was reviewed and all relevant information considered in reaching this decision.

Section 212(a)(6)(E) provides, in pertinent part:

(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) provides:

The Attorney General [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 an 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) ... 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.

According to the record, the applicant applied for U.S. admission on June 11, 2003 using a visitor's visa. During secondary inspection, his son's passport, altered to bear the photograph of another Indian national who was the applicant's traveling companion, was found in the applicant's baggage. Found along with the applicant's son's photo-substituted passport in the applicant's baggage were his son's employment authorization document (EAD), green card, social security card, and credit cards. The record shows that the alien whose picture was in the passport of the applicant's son was a friend of the son, who provided the travel documents for him to use to enter the United States. During his interview, the record reflects the applicant denied trying to pass off his companion as his son to the immigration inspector, and counsel asserts the applicant was ignorant of his son's plan to help his friend enter the United States in exchange for \$20,000. On June 13, 2003, the applicant was permitted to enter the country using his nonimmigrant visa and he returned to India after spending several weeks with relatives.

Based on the applicant's 2003 sworn statements and immigrant visa interview, a consular officer determined the applicant to be inadmissible for providing his son's passport to an unrelated alien to procure U.S. admission and for making misrepresentations to hide his role in the smuggling plan and thus found the applicant inadmissible under sections 212(a)(6)(E) and 212(a)(6)(C)(i) of the Act. Citing the consular findings, the service center director concluded that the applicant was inadmissible for participating in alien smuggling and, further, that the applicant was ineligible for relief, as the smuggled person was not his spouse, parent, son, or daughter. Thus, no waiver is available to the applicant for this ground of inadmissibility.

Under section 291 of the Act, 8 U.S.C. § 1361, the applicant bears the burden of proving eligibility for an immigrant visa, by showing either he is not inadmissible or he is eligible for a waiver of inadmissibility. The applicant fails to establish that he did not attempt to facilitate the U.S. entry of his traveling companion through the use of his son's passport and green card. Thus, he has not shown he is not inadmissible.

Because the applicant is inadmissible under a ground for which no waiver is available to him, no purpose would be served in discussing whether the applicant has established eligibility for a waiver under section 212(i) of the Act for fraud or misrepresentation or whether he would merit the waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden and, accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.