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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 2 5 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(d)(11) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(d)(11) and 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 waiver application was denied by the Director, Nebraska Service Center, and 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 a visa to the United States by fraud or willful misrepresentation of a material fact, and pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for being an 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. The applicant's mother is a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States.

The director concluded that the applicant is ineligible for a waiver under section 212(d)(11) of the Act and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated March 1, 2013.

On appeal, counsel asserts that the applicant did not commit fraud or willfully misrepresent himself in order to procure a visa and sections 212(a)(6)(C)(i) and 212(a)(6)(E) of the Act are not applicable to him. *Brief in Support of Appeal*, received April 2, 2013.

The record includes, but is not limited to, counsel's brief, financial records, photographs and the applicant's immigration documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) 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.

Section 212(i) of the Act provides that:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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.

The record reflects that the applicant was the beneficiary of a Form I-130, Petition for Alien Relative, filed by his father on January 3, 1995 and approved on May 5, 1995. The applicant, his spouse and their two children were interviewed for immigrant visas on June 18, 1998 based on this Form I-130. The applicant's spouse and two children filed for immigrant visas as his dependents.

At the time of the interview, the applicant stated that his petitioning father was alive and submitted a Form I-864, Affidavit of Support (Form I-864), at his interview purportedly executed by the petitioner. Due to insufficient financial resources, the applications of the applicant, his spouse and their children were held in pending status. On July 1, 1998, the applicant, his spouse and their two children re-applied at the consulate with additional sponsorship information. However, the applicant's father passed away on March 15, 1995, over three years before the applicant's interview. The applicant submitted falsified documents and made oral misrepresentations in order to obtain an immigrant visa. Therefore, he is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure an immigrant visa by willful misrepresentation of a material fact.

Counsel states that the applicant was honestly mistaken in believing that his case could be processed, as his father was living when the petition was approved and his mother, a lawful permanent resident, was living when he attended his consular interviews; and the applicant abandoned his petition upon realizing his mistake. Without supporting documentary evidence to support these claims, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

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

Section 212(d)(11) of the Act provides, in pertinent part, that:

> The Attorney General [now Secretary, Department 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 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.

Section 203 of the Act provides, in pertinent part, that:

> (a) Preference Allocation for Family-Sponsored Immigrants.

...

(4) Brothers and sisters of citizens. - Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).

As mentioned, the applicant's spouse and children filed for immigrant visas as his dependents. The applicant's submission of falsified documents and his oral misrepresentations therefore assisted his spouse and children in their attempt to obtain immigrant visas to the United States. The applicant therefore also is inadmissible under section 212(a)(6)(E) of the Act, for knowingly assisting his spouse and children in trying to enter the United States in violation of law.

Counsel asserts that the aforementioned Form I-864 was in the name of the applicant's deceased father, the income shown was from other relatives and this was discussed at the June 18, 1998 interview to the best of the applicant's knowledge; the applicant received correspondence dated August 10, 1998, requesting him to discuss the case with a consular officer; and the applicant learned that his petition would be terminated due to his father passing away prior to the interview date (though after the petition approval) and he voluntarily abandoned the petition. The record does not include supporting documentary evidence to support counsel's claims. Without supporting documentary evidence to support these claims, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel states that the Form I-797 dated March 6, 2013 reflects that the waiver was approved. Counsel has not provided evidence that the applicant's Form I-601 was approved. No evidence of approval appears in the record.

Counsel states that *Matter of J.F.D.*, 10 I&N Dec. 694 (INS 1963), cited by the director, is not applicable in the present case; and it is patently wrong that the "the applicant would remain inadmissible even if a waiver is granted." Counsel does not provide a legal basis for this claim. In *Matter of J.F.D.*, the Regional Commissioner found the applicant was mandatorily excludable under former section 212(a)(9) of the Act and was ineligible to file a waiver; no purpose therefore would be served in granting permission to reapply for admission. *Matter of J.F.D.*, at 695. Although *J.F.D.* relates to an application for permission to reapply for admission, it also involves an applicant who would remain inadmissible even if the permission to reapply for admission was granted. In this case, should the AAO approve the applicant's waiver under section 212(i) of the Act, he still would remain inadmissible under section 212(a)(6)(E) of the Act, and he is not eligible for a waiver under section 212(d)(11) of the Act

Section 212(d)(11) of the Act does not allow a waiver for an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a)(4) of the Act. The record reflects that the applicant is the beneficiary of a Form I-130 filed by his brother under section 203(a)(4) of the Act. Therefore, he is not eligible for a waiver under section 212(d)(11) of the Act.

Having found the applicant statutorily ineligible for relief under section 212(d)(11) of the Act, no purpose would be served in discussing whether he merits a waiver under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *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.