



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

[REDACTED]

DATE: JAN 28 2014 OFFICE: HOUSTON, TX

IN RE: [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 (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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Houston, Texas, and was dismissed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on motion. The motion will be granted, but the underlying application remains denied.

The applicant is a native and citizen of Pakistan who has resided in the United States since July 2, 2006, when he was admitted pursuant to a nonimmigrant visa with two individuals he claimed were his wife and child. He was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and child.

The Field Office Director concluded that the applicant was additionally inadmissible for alien smuggling under section 212(a)(6)(E) of the Act, was ineligible for a waiver of that inadmissibility, and denied the application accordingly. *See Decision of Field Office Director* dated April 17, 2012.

The AAO affirmed that the applicant was inadmissible under section 212(a)(6)(E) of the Act. *See AAO Decision*, July 16, 2013. In doing so, the AAO found that for such inadmissibility to attach the applicant did not need to know he could be charged with alien smuggling, he did not have to receive a financial benefit, nor did he have to be charged with the criminal offense of alien smuggling. *Id.*

On motion, counsel submits a brief and an updated affidavit from the applicant. In the brief, counsel contends that the applicant was the smuggled party, not the smuggler. Counsel additionally claims that the purported wife and child were otherwise eligible for visas through U.S. citizen or permanent resident relatives in the United States. Counsel concludes that inadmissibility under section 212(a)(6)(E) of the Act should not apply to the applicant, only inadmissibility under section 212(a)(6)(C)(i) of the Act.

The record includes, but is not limited to, the documents listed above, other applications and petitions, evidence of birth, marriage, residence, and citizenship, statements from the applicant and his spouse, letters from family and friends, copies of travel documents, financial and medical records, and documentation on country conditions in Pakistan. The entire record was reviewed and considered in rendering a decision on the motion.

In the present case, the record reflects that, in an application for a nonimmigrant visa, the applicant falsely indicated, both in the application forms and in an interview, he was married and had a child. The applicant does not contest inadmissibility under section 212(a)(6)(C) of the Act for fraud or willful misrepresentation of a material fact. The AAO therefore affirms that the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act for having procured a visa through fraud or misrepresentation.

As stated on appeal, in June 2006 the applicant submitted a nonimmigrant visa application indicating he was married to [REDACTED] who needed to travel to the United States for medical treatment. The applicant attended a nonimmigrant visa interview, where he affirmed that the two individuals were his wife and child. They were all granted nonimmigrant visas on June 12, 2006. In a sworn statement, the applicant admits he was not married to [REDACTED] his child when he applied for his nonimmigrant visa in 2006. The applicant, [REDACTED] were admitted to the United States pursuant to those nonimmigrant visas on July 2, 2006.

Section 212(a)(6)(E) of the Act provides, in pertinent 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.  
.....
- (iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

Section 212(d)(11) of the Act 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.

The Field Office Director found the applicant was inadmissible under section 212(a)(6)(E) of the Act, and was ineligible for a waiver under section 212(d)(11) of the Act because the individuals he smuggled were not family members. The AAO affirmed on appeal.

The applicant states he paid a travel agent a large sum of money, and acted on a travel agent's instructions to obtain the visa. Counsel adds that the applicant did not receive any consideration from [REDACTED] and given that all conversation with consular officers was with [REDACTED], the applicant was the one smuggled, not the smuggler.

On appeal, the AAO found that for inadmissibility under section 212(a)(6)(E) to apply, it was not necessary for the applicant to receive a financial benefit. *See AAO Decision*, page 4. Furthermore, the record does not support assertions that the applicant did not present false information to consular officers, and that he was the one smuggled, not the smuggler. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, the record indicates that the applicant submitted a nonimmigrant visa application, certifying that he read and understood his responses on the application, and that the responses were true and correct to the best of his knowledge and belief. *Form DS-158, Nonimmigrant visa application, signed June 7, 2006*. In that visa application, the applicant indicated he was married to [REDACTED] needed brain surgery in the United States. *Id.* Furthermore, [REDACTED] did not file separate visa applications, as in his visa application the applicant also requested visas on their behalf. *Id.* The applicant submitted and signed the one nonimmigrant visa application which resulted in the three of them obtaining visas. Moreover, the applicant admitted in a sworn statement that he lied to the consular official when he represented that [REDACTED] was his son. *Sworn statement*, November 15, 2011. The evidence indicating that the applicant made proactive written and oral representations outweighs the applicant's recent contention that he did not communicate with consular officers, and that he was the one who was smuggled. The record reflects that, although the applicant may have been acting at the direction of a travel agent, he was a 36 year old adult who actively represented false relationships and facts throughout his nonimmigrant visa application process. Additionally, as the applicant was the one who submitted a visa application requesting visas on [REDACTED] behalf, the applicant cannot now claim that [REDACTED] was the one smuggling him. Therefore, despite counsel's assertion to the contrary, it has not been established, by a preponderance of the evidence, that the applicant was not the smuggler.

Counsel additionally contends that [REDACTED] could have been otherwise eligible for visas through U.S. citizen or lawful permanent resident spouses or parents, and that [REDACTED] could have been a derivative U.S. citizen. Counsel moreover asserts that USCIS did not establish in its decisions that [REDACTED] were aliens, or were otherwise ineligible for visas. As stated above, it is the applicant's burden, not USCIS's, to establish that the applicant is eligible for the benefit sought. Regardless, there is sufficient documentation of record, including the nonimmigrant visa documentation, demonstrating that [REDACTED] were not U.S. citizens when they applied for nonimmigrant visas. Moreover, even if [REDACTED] and [REDACTED] were U.S. citizens or were eligible for other visas, the fact remains that they did not present evidence of their U.S. citizenship or apply for and obtain other such visas. The applicant applied for and obtained fraudulent nonimmigrant visas on their behalf, and all three parties were admitted to the United States on those fraudulent visas.

The AAO therefore affirms that the applicant is inadmissible pursuant to section 212(a)(6)(E) of the Act. Moreover, the record does not establish that the individual that the applicant aided to

enter the U.S. illegally was an immediate family member. Accordingly, the applicant is statutorily ineligible for a waiver under section 212(d)(11) of the Act and no other waiver is available for this ground of inadmissibility. As such, no purpose would be served in adjudicating his waiver under section 212(i) of the Act as the applicant is permanently inadmissible under another ground.

In proceedings for a waiver of grounds of inadmissibility under sections 212(i) and 212(d)(11) of the Act, 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. Accordingly, although the motion is granted, the underlying application remains denied.

**ORDER:** The motion is granted, but the underlying application remains denied.