

(b)(6)



U.S. Citizenship  
and Immigration  
Services

DATE: Office: NEBRASKA SERVICE CENTER

JAN 02 2015

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v), 212(d)(11) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 Mexico 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 procuring admission to the United States by fraud or willful misrepresentation of a material fact. She also was found inadmissible pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for being an alien who knowingly assisted another alien to enter or to try to enter the United States in violation of law; and she was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present for one year or more and seeking readmission within ten years of her last departure. She seeks waivers of inadmissibility under sections 212(i), 212(d)(11) and 212(a)(9)(B)(v) of the Act in order to reside in the United States.

The Director concluded that the applicant does not have a qualifying relative, as required for her to establish eligibility for a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, and that she is ineligible for a waiver under section 212(d)(11) of the Act as she is the beneficiary of a fourth preference Form I-130, Petition for Alien Relative (Form I-130); he denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Director*, dated June 9, 2014.

On appeal, counsel asserts that the applicant has qualifying relatives; a waiver under section 212(d)(11) of the Act may be granted on a discretionary basis for humanitarian purposes; and a child and parent entering the United States should be treated as a single person for the purposes of section 212(a)(6)(E) of the Act when the child lives with and is in that parent's custody. *Brief in Support of Appeal*, dated July 31, 2014.

The record includes, but is not limited to, counsel's brief, country-conditions information about Mexico, financial records, and statements from the applicant and her family and friends. 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 Attorney General [now Secretary of the Department 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 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 admitted to the United States in 1997, 2002 and 2004 using fraudulent Canadian documents. She is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through willful misrepresentation of a material fact. The applicant does not contest this finding of inadmissibility.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The applicant most recently entered the United States in 2004 with fraudulent documents and departed in 2006. The applicant accrued unlawful presence during this entire period of time. The applicant therefore is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of her 2006 departure from the United States. The applicant does not contest this ground of inadmissibility.

Waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Counsel asserts that the applicant's spouse will become a permanent resident upon approval of his application for lawful permanent resident status. She also mentions that his parents and his siblings are lawful permanent

residents or U.S. citizens. However, the record reflects that the applicant herself does not currently have a U.S. citizen or lawfully resident spouse or parent. Therefore, she is not eligible for a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act. As such, the evidence of hardship and of the applicant's good moral character in the record will not be addressed.

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).

The record establishes that the applicant was admitted into the United States with her spouse and their daughter using Canadian birth certificates that belonged to other individuals in 1997. The record reflects that the applicant assisted her daughter in entering the United States in violation of law and is therefore inadmissible under section 212(a)(6)(E) of the Act.

Counsel asserts that the applicant and her child should be treated as a single person for purposes of section 212(a)(6)(E) of the Act, which would negate any potential smuggling by the applicant. In support of this claim, counsel cites case law related to imputing an intention to remain indefinitely in a particular place from a parent to a minor child, to establish lawful domicile for relief under section 212(c) of the Act. Counsel also mentions examples of children attaining derivative status in different immigration contexts, such as cases involving applications for asylum and refugee status and naturalization. Counsel does not establish how the authority she cites applies to the applicant's circumstances. Counsel correctly asserts that discretionary waivers are available for humanitarian purposes in cases involving applicants who assisted their children to enter the United States illegally. However, counsel does not address the parenthetical provision in section 212(d)(11) of the Act that does not permit the exercise of discretion for beneficiaries of Forms I-130 filed by U.S. citizen siblings.

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

(11) The [Secretary] 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.

The record reflects that the applicant assisted her child in entering the United States in violation of law. However, the record also reflects that the applicant is a derivative beneficiary of a fourth preference Form I-130 petition, filed by her spouse's U.S. citizen brother. As the applicant is the derivative beneficiary of an immigrant petition under section 203(a)(4) of the Act, she is not eligible for waiver under section 212(d)(11) of the Act, which specifically excludes such petitions from its scope.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.