



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-M-P-F-V-

DATE: JAN. 15, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Haiti, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) §§ 212(d)(11) and 212(i), 8 U.S.C. §§ 1182(d)(11) and 1182(i). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for having knowingly assisted another alien to attempt to enter the United States in violation of law, and section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for having sought to procure an immigrant visa through misrepresentation of a material fact to a United States consular officer. The Applicant is seeking a waiver under sections 212(d)(11) and 212(i) of the Act, 8 U.S.C. §§ 1182(d)(11) and 1182(i), in order to reside in the United States.

In a decision dated March 19, 2015, the Director concluded that the Applicant was ineligible for a waiver under section 212(d)(11) because the individual she attempted to smuggle into the United States was not a spouse, parent, son or daughter and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the Applicant explains that she has two U.S. citizen children and a spouse who reside in the United States and that her spouse is experiencing extreme hardship due to the fact that she cannot enter the United States. She asks that USCIS exercise favorable discretion and approve her application.

Section 212(a)(6)(E) of the Act provides:

- (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) of the Act, 8 U.S.C. § 1182(d)(11), provides:

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 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.

Section 212(a)(6)(C)(i) of the Act states:

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.

The record indicates that the Applicant was interviewed by a consular officer in 2005 after applying for an immigrant visa. At that time she claimed that her sister-in-law's son was her own child and sought to facilitate his entry into the United States posing as her son. She maintained that the child was hers until DNA testing revealed he was not her child, at which point she recanted and admitted that he was not her son. The Applicant is therefore inadmissible pursuant to section 212(a)(6)(E) of the Act.

In 2014 the Applicant was interviewed in relation to a new immigrant visa application, and at the consular interview she did not tell the officer about having previously been denied a visa for violating section 212(a)(6)(E). The consular officer considered this to be a material fact and found her inadmissible pursuant to section 212(a)(6)(C)(i) for fraud or misrepresentation.

The record establishes that the individual the Applicant assisted to attempt to enter the United States in violation of law was not her spouse, parent, son or daughter, but her sister-in-law's son. She is therefore not eligible for a waiver under section 212(d)(11) of the Act. Further, as the Applicant is inadmissible under a ground for which no waiver is available, no purpose would be served in determining whether she is eligible for a waiver under section 212(i) of the Act for fraud or misrepresentation.

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.

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ORDER: The appeal is dismissed.

Cite as *Matter of M-M-P-F-V-*, ID# 15120 (AAO Jan. 15, 2016)