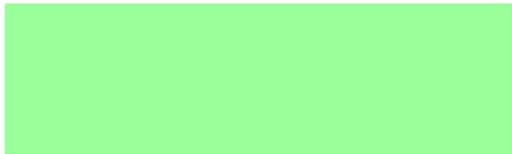




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 18 2013**

Office: MEXICO CITY, MEXICO

FILE:

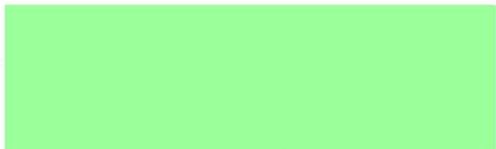
IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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 Field Office Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E), for alien smuggling; and 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is the father of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to sections 212(d)(11) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(d)(11) and 1182(a)(9)(B)(v), in order to reside in the United States.

The field office director concluded that the applicant has failed to establish that he has a qualifying relative through whom he claims eligibility for a waiver, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated March 22, 2013.

On appeal counsel incorrectly asserts that the Form I-601 was denied because extreme hardship to the applicant's U.S. citizen daughter, [REDACTED], had not been established. *See Counsel's Appeal Brief*, received March 14, 2013. Counsel contends that the applicant's daughter suffers extreme mental and emotional hardship due to separation from the applicant. *Id.*

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; affidavits from the applicant, his spouse, and his children; earlier letters from the applicant and his spouse; health-related documents; financial-related documents; school and education-related documents; Mexico country-conditions documents; birth and marriage certificates; and documents related to the applicant's removal proceedings and appeals. The entire record was reviewed and considered in rendering this decision on the appeal.

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 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.

The record shows that on June 26, 2012, during his immigrant visa interview by a consular officer, the applicant testified that he smuggled his spouse into the United States without inspection in 1988. As the only individual the applicant assisted in entering the United States in violation of law was his own spouse, the AAO could exercise its discretion for humanitarian purposes to assure family unity in granting a waiver to the applicant under section 212(d)(11) of the Act. However, the applicant remains inadmissible under section 212(a)(9)(B)(i) of the Act and has not established eligibility for a waiver under section 212(a)(9)(B)(v).

Section 212(a)(9) of the Act provides:

(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.

The record indicates that the applicant entered the United States without inspection in 1988 and remained until he was removed to Mexico on December 4, 2007. On November 30, 2000 he was placed into removal proceedings and thereafter, a number of appeals were filed. The applicant was removed from the United States on December 4, 2007. He accrued unlawful presence in the United States for a period in excess of one year. As the applicant is seeking admission within 10 years of his removal, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. He requires a waiver under section 212(a)(9)(B)(v) of the Act.

A waiver of inadmissibility under section 212(9)(a)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes only the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant has failed to demonstrate that he has a U.S. citizen or lawful permanent resident spouse, mother or father. Rather, the record indicates that the applicant's spouse and parents are all natives and citizens of

Mexico with no lawful immigration status in the United States. While the applicant has shown that he has children who are U.S. citizens, an applicant's children are not qualifying relatives for purposes of a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

The evidence in the record does not establish that the applicant is the spouse, son or daughter of a U.S. citizen or lawful permanent resident. The applicant's U.S. citizen daughter is not a qualifying relative for purposes of a waiver under section 212(a)(9)(B)(v) of the Act. Because the applicant does not have a qualifying relative, he is ineligible to seek a waiver under section 212(a)(9)(B)(v).

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, the applicant has not met that burden.

ORDER: The appeal is dismissed.