U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: SEP 29 2014 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [redacted]

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

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure, and section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E) for having assisted other aliens to unlawfully enter the United States. He is the son of a Lawful Permanent Resident and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11).

The Director concluded the applicant was not eligible for a waiver under section 212(d)(11) for his section 212(a)(6)(E) inadmissibility and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(a)(9)(B)(v) of the Act as a matter of discretion on January 30, 2014.

On appeal, counsel for the applicant asserts that the applicant did not knowingly assist anyone with entering the United States illegally, that a coyote had dropped off the group which the applicant was travelling with just inside the United States border, and that because the applicant did not take any "affirmative action" to assist other aliens as required by case precedent he is not inadmissible under section 212(a)(6)(E) of the Act.

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

> (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 on March 29, 2004 and remained until he departed on March 31, 2012. Therefore, the applicant was unlawfully present in the United States for a period of over one year, and is now seeking admission within ten years of his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

Section 212(a)(6) of the Act states, in relevant part:

(E) Smugglers.-

(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.

(ii) Special rule in the case of family reunification.-Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

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

Section 212(d) states, in relevant part:

(11) 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.

A conviction for smuggling is not necessary to render an alien inadmissible under section 1182(a)(6)(E) of the Act. *In Re Ruiz-Romero*, 22 I&N Dec. 486, 490 (BIA 1999) (reasoning that the title of the section was non-substantive, and did not describe the full extent of activities that may be regarded as "alien smuggling" or "related to alien smuggling," and were intended to describe activities which would suffice, even in the absence of a conviction, to exclude or deport an alien).

The record indicates that the applicant entered the United States without inspection on March 24, 2004, by crossing the Rio Grande River at a point not designated as a port of entry into the United States while accompanying a group of minors.

Counsel for the applicant asserts that the applicant is not inadmissible under section 212(a)(6)(E) because he did not take any affirmative act to assist another alien in entering the United States unlawfully, and cites to a 9th Circuit case, *Altamirano v. Gonzales,* 427 F.3d 586 (9th Cir. 2005). Counsel asserts, based on a statement by the applicant, that the applicant met a coyote in Honduras

in 2004 who agreed to take him to the United States. He left Honduras with the coyote and two other individuals and after travelling to Guatemala he met up with a six year old female, who he did not know, but was told was a cousin of the other two females, and a female coyote. They travelled as a group through Mexico to enter the United States. She further states that the applicant was dropped off by the coyote just across the border where he was encountered by immigration, a fact pattern that mimics another case cited by counsel, *Aguilar-Gonzales v. Mukasey,* 534 F.3d 1204 (9th Cir. 2008), and that the applicant did not assist the others in his group any way. Based on *Altamirano*, and other cases, counsel asserts that the applicant did not make any affirmative act to assist the others, all minors, to enter the United States and that he is not inadmissible under section 212(a)(6)(E) of the Act.

The applicant's recent statement and counsel's assertions contradict the statements and facts obtained at the time the applicant was encountered by immigration authorities on March 29, 2004. The record contains a Form I-213, Record of Deportable Alien/Inadmissible Alien, dated March 29, 2004. It states that, when encountered by a Customs and Border Patrol (CBP) agent conducting line-watch operations after they crossed the river, the applicant wilfully and freely admitted that the six year old female travelling with him was his niece. The form also states that applicant stated that he and his niece had departed Honduras by bus, travelled through Guatemala and Mexico together, and then waded the Rio Grande River to enter the United States. This contradicts the applicant's recent assertions regarding the fact that he did not know the persons he was travelling with. When questioned by the CPB officer the applicant spoke on behalf of his niece and made no mention of a coyote, nor was there any mention of a coyote by the CBP agent conducting line-watch operations.

The record does not contain any evidence supporting the applicant's new version of the facts surrounding his entry into the United States. Without documentary evidence to support counsel's assertions, they will not satisfy the petitioner's burden of proof. The unsupported 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). The Immigration and Nationality Act makes clear that a foreign national must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act. *See* also 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). See *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008). See *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). In this case, the record indicates the applicant was the only adult accompanying a group of minors across the border, and there is no evidence to support the applicant's version of events as presented on appeal. As such, the record establishes that the applicant is inadmissible pursuant to section 212(a)(6)(E) of the Act.

With regard to a waiver under section 212(11)(d), the record establishes that only one of the persons travelling with the applicant when entering the United States was related to him, his niece. As such, the record does not establish that the persons the applicant assisted in unlawfully entering the United States were his spouse, parent, son or daughter. As such, that applicant is statutorily ineligible for a waiver under section 212(d)(11) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he is eligible for a waiver under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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, the appeal will be dismissed.

ORDER: The appeal is dismissed.