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

U.S. Citizenship and Immigration Services

(b)(6)

Date: AUG 3 1 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application. 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 who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within 10 years of her last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(E), 8 U.S.C. § 1182 (a)(6)(E), as an alien who knowingly encouraged, induced, assisted, abetted or aided any other alien to enter or try to enter the United States in violation of law. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility to reside in the United States with her U.S. citizen spouse.

The director determined that the applicant is inadmissible to the United States under a ground for which no waiver is available. The director denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly.[1] *See Decision of the Director,* dated October 29, 2014.

On appeal the applicant asserts that at the time of her interview at the U.S. Embassy in Honduras on October 16, 2012, and prior to her filing a waiver application, there was no finding of inadmissibility under section 212(a)(6)(E) of the Act. She asserts that documents she received from the consular officer only indicated that she was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for residing unlawfully in the United States, which she concedes, and under section 212(a)(6)(B) of the Act, for failing to attend removal proceedings, which she asserts is no longer applicable as the removal proceedings have been reopened and terminated without prejudice. The applicant contends that she is only inadmissible for accruing unlawful presence and that she has established that refusal of admission would result in extreme hardship to her spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

[1] The director also found the applicant inadmissible pursuant to section 212(a)(6)(B) of the Act for failing to attend removal proceedings. The record shows that the applicant was issued a Notice to Appear on February 1, 2004, and an order of removal was issued in absentia by an immigration judge on July 29, 2004. However, on August 6, 2013, removal proceeds against the applicant were reopened and terminated without prejudice.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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 record reflects that the applicant attempted to enter the United States without inspection on February 1, 2004, near Texas. The record shows that the applicant was apprehended by agents of the U.S. Customs and Border Patrol, placed in removal proceedings before an immigration judge, and issued an order of removal in absentia on July 29, 2004.[2] The applicant did not depart the United States until May 2012. The applicant is thus inadmissible pursuant to section 212(a)(9)(B) of the Act.

The director also found the applicant inadmissible under Section 212(a)(6)(E) of the Act, which provides:

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

Subsection (d) provides:

> (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

[2] The director's decision indicates that the applicant was ordered removed in absentia on August 3, 2004. As noted above, the record establishes that the applicant was ordered removed on July 29, 2004. We deem this error in dates to be harmless error.

> 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.

With respect to this finding of inadmissibility, the record reflects that at the time she was apprehended, the applicant was traveling with a juvenile nephew with whom she stated she had left Honduras on January 15, 2004, traveling through Guatemala and Mexico before entering the United States on or around February 1, 2004. Based on this information the director determined the applicant was inadmissible under section 212(a)(6)(E) of the Act.

Although the applicant asserts she is not inadmissible under section 212(a)(6)(E) of the Act for smuggling, she has presented no argument or objective evidence on appeal to contest the finding of the director. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The record establishes that the applicant traveled with a juvenile nephew from Honduras to the United States and attempted to avoid inspection at a port of entry. In application proceedings, it is the applicant's burden to establish admissibility and eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The record supports a finding that the applicant knowingly assisted another alien to try to enter the United States in violation of law, and she has not met her burden of establishing that she is not inadmissible under section 212(a)(6)(E) of the Act.

A section 212(d)(11) of the Act waiver of inadmissibility is dependent upon a showing that the alien: (1) only aided 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; and (2) either had been admitted to the United States as a lawful permanent resident alien and did not depart the United States under an order of removal, or, is seeking admission as an eligible immigrant. With regard to the former, the applicant's nephew is not her "spouse, parent, son, or daughter," and thus no waiver is available to her.

We therefore find that the applicant's inadmissibility under section 212(a)(6)(E)(i) of the Act cannot be waived as a waiver is not available. The appeal must be dismissed.

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.

ORDER: The appeal is dismissed.