



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

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

MATTER OF M-D-J-G-H-

DATE: DEC. 8, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(d)(11), 8 U.S.C. § 1182(d)(11) and § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Director of the 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)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly engaged in alien smuggling of individuals that were not her spouse, parent, son or daughter. The Applicant was also found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for remaining in the United States unlawfully for one year or more and seeking admission within 10 years of her departure from the country.

In a decision dated January 8, 2015, the Director determined that the Applicant was ineligible for a waiver under section 212(d)(11) of the Act; she would remain inadmissible under section 212(a)(6)(E)(i) of the Act even if a waiver of section 212(a)(9)(B)(i)(II) of the Act was granted; and the section 212(a)(6)(E)(i) ground of inadmissibility supports denial of the waiver application as a matter of discretion. The Form I-601 was denied accordingly.

On appeal, the Applicant asserts that the alien smuggling charges against her may have been exacerbated or impugned to her based on her brother's prior involvement with alien smuggling. She asserts further that the Director abused his discretion in her case, and that the evidence in the record establishes that her U.S. citizen spouse would suffer extreme hardship if she is denied admission into the United States. The record includes, but is not limited to, the Applicant's statements and evidence of hardship to her spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) 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-

(b)(6)

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....

(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.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

....

(v) Waiver.-The Attorney General [now Secretary of Homeland Security, (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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record reflects that Applicant entered the United States without inspection in 2006 and departed the United States in November 2011. The Applicant accrued unlawful presence from [REDACTED] 2009, the date she turned 18 years-old, until November 2011, the date she departed the United States. The Applicant 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 November 2011 departure from the United States. The Applicant does not contest this ground of inadmissibility.

Section 212(a)(6)(E) of the Act provides, in pertinent part:

(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.

....

(b)(6)

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

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

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 ... 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 such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record in this case reflects that on [REDACTED], 2011, U.S. immigration officials in [REDACTED] Texas identified the Applicant as a principal alien smuggler. The record also reflects that during her 2013 interview with U.S. consular officers in Mexico, the Applicant stated that in [REDACTED] 2011 she and her brother were pulled over for helping two undocumented individuals enter the United States at [REDACTED] Texas. The Applicant stated on her Form I-601 that she was stopped for driving a car with other undocumented aliens, she was arrested; her car was impounded; and that she voluntarily departed back to Mexico.

The Applicant asserts on appeal that alien smuggling charges against her may have been exacerbated or impugned to her based on her brother's prior involvement with alien smuggling. The Applicant states in an October 17, 2013 letter, that she picked up her brother and some of his friends after her brother asked her to get them; that when officers later asked her if she smuggled people into the United States she told them that she had not; and her brother did not tell her until after she was arrested that these were not his friends and he was helping them get in the United States. The Applicant's assertions, however, lack detail, are uncorroborated by independent evidence, and alone are insufficient to overcome evidence in the record reflecting that she knowingly smuggled undocumented individuals into the United States. Accordingly, we find that the Applicant is inadmissible under section 212(a)(6)(E) of the Act for alien smuggling.

A waiver under section 212(d)(11) of the Act is available only to individuals whose smuggling violations involve encouraging, inducing, assisting, abetting, or aiding a spouse, parent, son, or daughter to enter the United States unlawfully. In this case, the record reflects that the undocumented people that the Applicant helped smuggle into the United States were not her spouse, parent, son, or daughter. The Applicant is therefore ineligible to apply for a waiver of her 212(a)(6)(E)(i) inadmissibility.

We note further that no purpose is served in adjudicating the application for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. The object of a waiver application, in the context of an application for an immigrant visa filed at a consulate or embassy abroad, is to remove inadmissibility as a basis of ineligibility for that visa. An individual is not required to file a separate waiver application for each ground of inadmissibility, but rather one application that, if approved, extends to all

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inadmissibilities specified in the application. Where an individual is subject to an inadmissibility that cannot be waived, however, approval of the waiver application would not have the intended effect. Thus, no purpose is served in adjudicating such a waiver application, and U.S. Citizenship and Immigration Services may deny it for that reason as a matter of discretion. *Cf. Matter of J- F- D-*, 10 I&N Dec. 694 (Reg. Comm'r 1963). As the Applicant is inadmissible under section 212(a)(6)(E)(i) of the Act, for which no waiver is available to her, no purpose is served in discussing whether she merits a waiver under section 212(a)(9)(B)(v) of the Act.

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.

Cite as *Matter of M-D-J-G-H-*, ID# 14168 (AAO Dec. 8, 2015)