

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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



H7

FILE: 

Office: GUANGZHOU, CHINA

Date: **APR 18 2011**

IN RE: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Guangzhou, China, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of China who admitted during a consular interview that she provided money to assist a son being smuggled into the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E). She is the mother of a U.S. citizen. The applicant is seeking a waiver under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11) in order to reside in the United States.

The Officer in Charge concluded that the applicant was ineligible for a waiver because she had not established any compelling humanitarian, public interest or family unity basis for the exercise of favorable discretion, and denied the Waiver of Grounds of Inadmissibility (Form I-601) on January 24, 2008.

On appeal, counsel for the applicant asserts that the applicant will suffer extreme hardship if the she is prohibited from residing in the United States.

Section 212(a)(6)(E) of the Act states, in relevant 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.

(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 1153(a)(2) of this title (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) of this section.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible under section 212(a)(6)(E) of the Act because she did not give her son money in order to be smuggled into the United States but gave him money out of love for him. *Statement in Support of the Applicant's Appeal*, dated August 6, 2008. The applicant states that she knew her son was travelling to the

United States, but that she only gave him money so he would not be cold or without necessities. *Statement of the Applicant*, dated February 28, 2008.

The record does not contain any documentary evidence to support these assertions. The applicant initially admitted to the consular officer that she gave her son 40,000 RMB "to smuggle to U.S." *Official Form 194*, signed April 10, 2002. The AAO does not find the applicant's new, inconsistent assertions sufficient to overcome her prior testimony. The record does not support the assertion that the applicant's money was not given to her son to aid or abet him to enter the United States in circumvention of U.S. immigration laws. As such, she is inadmissible under section 212(a)(6)(E).

The record contains, but is not limited to: a statement from counsel; a statement from the applicant's daughter; a statement from the applicant; photographs of the applicant, her grandson and other family members; a copy of the applicant's daughter's naturalization certificate; and a copy of the applicant's grandson's passport.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(d)(11) 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) of this section 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 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (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.

A waiver under this section may be granted for humanitarian purposes, to assure family unity, or if it is otherwise in the public interest. 8 U.S.C. § 1182(d)(11). In this case the AAO takes note of the applicant's advanced age. In addition, the applicant's husband has recently passed away. *Statement of the Applicant*, February 27, 2008. There are also significant family ties in the United States, including a daughter, a son and a grandson. Testimony of the applicant's daughter indicates that the applicant is very close with her, and has spent significant time rearing her grandson who now resides in the United States.

Based on these observations the AAO finds sufficient humanitarian and family unity grounds on which to approve the applicant's waiver.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(E) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.