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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

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[REDACTED]

FILE: [REDACTED] Office: NEWARK

Date: **JAN 25 2011**

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for: Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. 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 [REDACTED]. He was found to be inadmissible to the United States under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(E)(i), for assisting three aliens with entry into the United States in violation of law. The applicant seeks a waiver of inadmissibility under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) based on a finding that the applicant is statutorily ineligible to file a waiver under section 212(d)(11) of the Act. *Decision of the Field Office Director*, dated July 21, 2008.

On appeal, counsel asserts that the applicant is eligible for a waiver under section 212(c) of the Act. *Counsel's Brief*, dated August 12, 2008.

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 reflects that on November 30, 1992, the applicant was charged with willfully encouraging and inducing the entry into the United States of three aliens not lawfully entitled to enter or reside within the United States in reckless disregard of the fact that such coming to, entry, and residence is in violation of law. On February 16, 1993, the applicant was convicted of alien smuggling in the United States District Court in the Eastern District of New York, in violation of 8

U.S.C. § 1324(a)(2) [REDACTED] The applicant was placed on probation for a term of three years and ordered to pay a fine. Accordingly, the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act. The applicant does not contest his inadmissibility on appeal.

Counsel asserts that the applicant is eligible for a 212(c) waiver. Section 212(c) of the Act, 8 U.S.C. § 1182(c) is discretionary relief from inadmissibility that was repealed with the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA). The U.S. Supreme Court has held that, “§ 212(c) relief remains available for aliens . . . whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief at the time of their plea under the law then in effect.” *INS v. St. Cyr*, 533 U.S. 289, 326 (2001).

However, discretionary relief under section 212(c) of the Act, which is not the subject of the Form I-601 but is properly sought by filing Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile, is not within the subject matter jurisdiction of the AAO to adjudicate with this appeal. Likewise, we do not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under section 245 of the Act. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). Therefore, our decision is limited to the applicant’s eligibility for a waiver under section 212(d)(11) of the Act.

A waiver of inadmissibility under section 212(d)(11) of the Act 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) the alien 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.

In the present case, the three aliens the applicant attempted to smuggle are not related to him, and thus not qualifying relatives for purposes of a waiver of inadmissibility under section 212(d)(11) of the Act. The AAO, therefore, finds that the applicant's inadmissibility under section 212(a)(6)(E) cannot be waived. Since the applicant is statutorily ineligible for a waiver, pursuit of the instant application is moot and the appeal must be dismissed.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to overcome the basis of denial of his Form I-601 waiver of inadmissibility. The appeal will therefore be dismissed and the Form I-601 will be denied.

ORDER: The appeal is dismissed.