

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

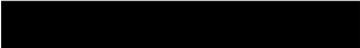


47

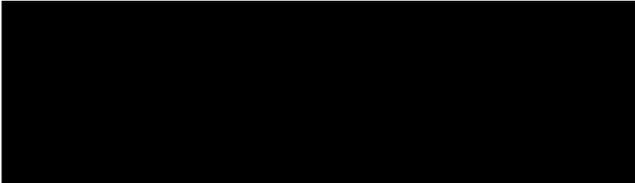
Date: JUL 20 2011

Office: LOS ANGELES, CA

FILE: 

IN RE: 

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:


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. The fee for a Form I-290B is currently \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Mexico, was found to be inadmissible to the United States under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for aiding and abetting an alien to enter the United States at a time and place other than as designated by an immigration officer. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The record includes two waiver application decisions from the Los Angeles Field Office Director and two corresponding appeals from applicant's counsel. The AAO notes that both decisions and both appeals will be considered in this decision.

In his decision, dated December 11, 2007, the field office director found the applicant inadmissible under section 212(a)(6)(E)(i) of the Act. He then adjudicated the applicant's eligibility for a waiver under section 212(i) of the Act and found that the applicant had not established extreme hardship to a qualifying relative. The waiver application was denied accordingly.

In his decision, dated August 13, 2008, which the field office director states supersedes the decision dated December 11, 2007, the field office director again finds the applicant inadmissible under section 212(a)(6)(E)(i) of the Act. He also finds that the applicant is not eligible for a section 212(d)(11) waiver because the record failed to indicate that the persons the applicant helped into the United States were his spouse, parents, or children. The waiver application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated January 7, 2008, counsel states that the field office director's decision was made in error, is prejudiced by its factual errors, incorrectly references section 212(i) of the Act, and failed to consider all relevant evidence of hardship.

In her appeal, dated September 2, 2008, counsel states that the record does not indicate that the applicant admitted to, was charged with, or removed from the United States for alien smuggling under section 212(a)(6)(E)(i) of the Act. Counsel states that the Report of Apprehension prepared by the Border Patrol states that the applicant did not meet the guidelines for an action for alien smuggling.

The AAO notes that in her appeal dated September 2, 2008, counsel also requests a refund for the filing fee of her appeal dated January 7, 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 includes the Border Patrol Report of Apprehension or Seizure (Form I-44), which states that on December 30, 1995 the applicant was apprehended by border patrol agents in Nogales, Arizona as the driver of a vehicle transporting seven undocumented aliens from Nogales, Arizona to Phoenix, Arizona. During his interview with border patrol agents the applicant stated that he first entered the United States two weeks prior to December 30, 1995 and had been living in Phoenix, Arizona. He states that he had returned to Mexico several times with his last illegal entry being at about 1:00 a.m. on December 30, 1995. The applicant stated that the seven passengers in his vehicle were his friends, that he had met them in Nogales, Sonora, Mexico, that he did not enter the United States with them, but that he had agreed to give them a ride to Phoenix. The applicant states further that he knew all of his passengers were in the United States illegally, but he was not going to receive any money for transporting them to Phoenix. The AAO notes that prior to apprehension, the applicant led border patrol agents on a high speed chase, requiring the assistance of additional border patrol agents and Arizona Department of Public Safety Units to stop his vehicle.

The seven undocumented passengers in the applicant's vehicle stated that they paid an unknown person in Nogales, Sonora, Mexico about \$100 each to be guided across the border and transported to Phoenix. They also stated that the applicant was waiting for them with the car in Nogales, Arizona and that this meeting was the first time they saw the applicant.

As stated by counsel, Form I-44 states that although the investigation in the case revealed that the applicant was transporting aliens illegally in the United States in violation of 8 U.S.C. Section 1324, the case did not meet the guidelines, as formulated by the U.S. Attorney's Office in Tucson, Arizona, for criminal prosecution.

The AAO notes that most Board of Immigration Appeals (BIA) and U.S. court decisions involving the issue of alien smuggling are related to the ground of deportability for smuggling in section 237(a)(1)(E)(i) of the Act, 8 U.S.C. § 1227(a)(1)(E)(i). Section 237(a)(1)(E)(i) of the Act provides that, "Any alien who (prior to the date of entry, at the time of any entry, or within five years of the

date of any entry) 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 deportable.” The elements defining the act of alien smuggling under section 237(a)(1)(E)(i) of the Act are identical to the elements under section 212(a)(6)(E)(i). The AAO will therefore review deportability cases involving section 237(a)(1)(E)(i) of the Act as part of its analysis in the present case.

In the recent precedent decision, *Matter of Martinez-Serrano*, 25 I&N Dec. 151 (BIA 2009), the BIA noted that a conviction is not necessary for a finding of deportability under section 237(a)(1)(E)(i) of the Act, so the border patrol agents finding that the applicant’s case did not meet the guidelines, as formulated by the U.S. Attorney’s Office in Tuscon, Arizona, for criminal prosecution under 8 U.S.C. Section 1324 for bringing in or harboring certain aliens, is not determinative of whether the applicant is inadmissible under section 212(a)(6)(E)(i) or deportable under section 237(a)(1)(E)(i) of the Act.

Furthermore, the Act itself indicates that section 212(a)(6)(E) has a broader application than section 274(a) of the Act, 8 U.S.C. § 1324(a) because, unlike other sections of the Act related to alien smuggling, it does not specifically refer to section 274(a) of the Act, 8 U.S.C. § 1324(a).

Moreover, in *Matter of Martinez-Serrano*, the BIA analyzed the scope of the smuggling ground of deportability under section 237(a)(1)(E)(i) of the Act and determined that “the statute was intended to cover a broad range of conduct, and direct participation in the physical border crossing is not required under section 237(a)(1)(E)(i).” 25 I&N Dec. at 154. Thus, the AAO, based on the applicant’s Form I-44, that the applicant knew he was assisting individuals to enter further into the United States who had in the minutes prior to meeting him crossed the border illegally. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act as an alien who has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

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) 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.

The record does not show that the individuals the applicant attempted to smuggle were qualifying relatives for the purposes of a section 212(d)(11) of the Act waiver of inadmissibility. The AAO, therefore, finds that the applicant’s inadmissibility under section 212(a)(6)(E) cannot be waived. Therefore, pursuit of the instant application is moot and the appeal must be dismissed.

ORDER: The appeal is dismissed.