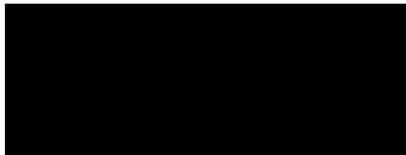




U.S. Citizenship
and Immigration
Services



117

DATE: **DEC 14 2012** Office: GUANGZHOU, CHINA



IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of the People's Republic of China (China) who was found to be inadmissible to the United States pursuant to 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 illegal alien to enter the United States. The applicant is the father of a U.S. citizen daughter and a Chinese citizen son and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks 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 with his spouse and children.

The Field Office Director determined that the applicant did not qualify for the waiver in section 212(d)(11) because he helped both of his children to enter the United States, when a waiver may be granted "to someone who assists only one person to enter illegally." He denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 9, 2011.

On appeal, the applicant claims that he only helped his daughter to enter the United States, because he could not afford to help their son. *Form I-290B, Notice of Appeal or Motion*, filed June 2, 2011.

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

- (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.

Section 212(d)(11) of the Act provides:

The [Secretary] may, in [her] 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 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 indicates that in 1999, the applicant's daughter was smuggled into the United States. After her entry into the United States, when she asked the applicant and his wife to help pay the smuggler, he and his wife borrowed money to help her pay. In 2000, the applicant's son was smuggled into the United States. During his visa interview on May 28, 2011, the applicant

claimed that he paid for his son to be smuggled into the United States. However, in his statement attached to the appeal, the applicant claims that since they were in debt after their daughter's arrival in the United States, they could not afford to pay their son's smuggler.

The AAO notes that the Field Office Director erred in determining that section 212(d)(11) applies to someone who assists "only one person to enter illegally," as there is no numerical limitation specified in that section. Section 212(d)(11) clearly indicates that a waiver may be granted if the individual is "the alien's spouse, parent, son, or daughter (and no other individual)," and in the present case, the applicant assisted his daughter and son to enter the United States. *See Matter of Farias-Mendoza*, 21 I&N Dec. 269, 272 (BIA 1996) (summarizing Service's position that the statute sets out the specific family members and the word 'only' emphasizes "the exclusive nature" of the listed relationships, whereas the parenthetical "and no other individual" underscores the qualifying relationships).

The applicant has established that the individuals he aided to enter the United States illegally are his daughter and son. He is eligible for a waiver under section 212(d)(11), which may be granted for humanitarian purposes, to assure family unity, or if it is otherwise in the public interest. Therefore, the AAO, in its discretion approves the applicant's waiver under section 212(d)(11) of the Act to assure family unity. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(d)(11) of the Act, the burden of proving eligibility remains entirely 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.