

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



U.S. Citizenship
and Immigration
Services

[Redacted]

H7

Date: NOV 27 2012 Office: ACCRA [Redacted]

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 AAO inappropriately applied the law 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 with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria 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 having knowingly encouraged, induced, assisted, abetted or aided another alien to enter or try to enter the United States in violation of the Act. The record reflects that the applicant is married to a U.S. citizen, and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

In a decision dated September 3, 2010, the field office director denied the Form I-601 application for a waiver, finding that the applicant is inadmissible under a provision of law for which there is no waiver. The director further found, presumably because the applicant filed a Form I-601 waiver application, that the applicant failed to establish that her U.S. citizen husband would experience extreme hardship as a consequence of her inadmissibility.

On appeal, the applicant asserts that the record does not indicate that she admitted to, was charged with, or was convicted of alien smuggling. The applicant further asserts that the record does not demonstrate that she knowingly assisted or aided in her brother's, or anyone else's, attempted entry into the United States and that the record contains insufficient evidence to conclude that she is inadmissible.

The record contains, but is not limited to: the applicant's brief; a statement from the applicant's U.S. citizen husband; a marriage certificate; an application for immigrant visa and alien registration completed by the applicant on May 12, 2010; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(E) of the Act provides that:

(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).

The record shows that the U.S. Embassy in ██████████ denied the applicant's nonimmigrant visa application in 2003 for having furnished her brother with a false employment document from the ██████████ while she was working there as an administrative manager. The record also contains the U.S. Department of State's (USDOS) refusal worksheet report, which indicates that the applicant's brother used the employment document furnished by the applicant during his Non-Immigrant Visa (NIV) interview. Moreover, in her Application for an Immigrant Visa and Alien Registration (Form DS-230) dated May 12, 2010, the applicant stated, in response to question 42 of the Form, that she was previously refused admission to the United States because of an inadmissibility finding relating to alien smuggling. In his decision, the director indicated that notes from the applicant's January 2003 visa interview showed that she incurred a bar to inadmissibility by enabling her brother to procure a visa by "providing him with papers showing that he was traveling to the United States to train for a company that did not employ him." Moreover, the AAO notes that in a memorandum dated July 8, 2010, found in the record, the Consulate General of the United ██████████ indicated that the applicant furnished "her brother with a false employment document from ██████████ while she was working there. The brother successfully used the document to obtain a nonimmigrant visa."

In her brief on appeal, the applicant states that she was employed as the personal assistant to the Travel Officer of ██████████. She asserts that while she worked for ██████████ the company initiated a program wherein it sponsored certain unemployed ██████████ nationals to travel to the United States for skill acquisition. She contends that her brother was one of the beneficiaries of the program and that she was in charge of processing his paperwork. She further contends that the company found her brother qualified for the program and that it agreed to sponsor him. The applicant asserts that the Consular Officer who interviewed her regarding a visa application in 2003 was confused when he found that she had misrepresented to the Office that her brother was an employee of ██████████. Finally, the applicant contends that the burden of proof in this proceeding rests with the government to show that she is inadmissible to the United States.

At the outset, the AAO notes that, unlike a removal hearing in which the government bears the burden of establishing an alien's removability, the burden of proof in the present proceedings is on the applicant to establish that she is not inadmissible. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review of the evidence, the AAO finds that 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. Firstly, the applicant does not evidence her assertions regarding her duty to process paperwork for beneficiaries of ██████████ ██████████ alleged travel and sponsoring program. Additionally, she has not presented evidence refuting the Consular Officer's notes from 2003, which indicated that the documents she created for her brother falsely claimed that he was employed by ██████████. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in

these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, though the applicant asserted that she was in charge of processing the visa application paperwork for a special sponsoring program, she failed to submit any evidence indicating that such a program was instituted by [REDACTED] at the time she was employed there.

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 *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. 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 [smuggling act] is not required under section 237(a)(1)(E)(i).” 25 I&N Dec. at 154. Thus, “[t]he plain meaning of this statutory provision requires an affirmative act of help, assistance, or encouragement.” *Altamirano v. Gonzalez*, 427 F.3d 586, 592 (9th Cir. 2005). Importantly, section 212(a)(6)(E)(i) covers an individual “who participates in a scheme to aid other aliens in an illegal entry,” even if the assisting individual did not hire the smuggler or was not present at the point of illegal entry. *Soriano v. Gonzalez*, 484 F.3d 318, 321 (5th Cir. 2007).

As previously noted, the record contains the USDOS refusal worksheet report, which indicates that the applicant’s brother used a false employment document furnished by the applicant during his NIV interview to gain entry into the United States, even though there was no indication that he was employed by the alleged sponsoring company. The record does not contain corroborating documentary submissions indicating that the employment document was prepared by the applicant as part of his visa application as an employee of [REDACTED]. Based upon this evidence, the AAO finds the record of proceeding sufficient to conclude that the applicant assisted in her brother’s entry into the United States in violation of law. The AAO concludes that her assertions on appeal are unsupported by evidence and that her processing of an employment document constitutes the affirmative act of assistance required for a finding of inadmissibility under section 212(a)(6)(E)(i) of the Act.

In his decision, the director erroneously found that the applicant was inadmissible under “a section of the law for which there is no waiver.” Section 212(d)(11) of the Act provides, in pertinent part, that:

(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) 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.

As noted, a waiver of a section 212(a)(6)(E)(i) inadmissibility is available to individuals whose smuggling violations involved encouraging, inducing, assisting, abetting or aiding a spouse, parent, or son or daughter to enter the United States unlawfully. In the present case, the family member whom the applicant assisted was her brother. In that siblings are not among the categories of relatives listed in section 212(d)(11) of the Act, the applicant is statutorily ineligible to apply for a waiver of her 212(a)(6)(E)(i) inadmissibility.

The applicant is inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act and no waiver is available. Having found the applicant to be statutorily ineligible for relief, the appeal will be dismissed.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.