



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **APR 02 2013**

OFFICE: GUANGZHOU, CHINA

FILE: [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:

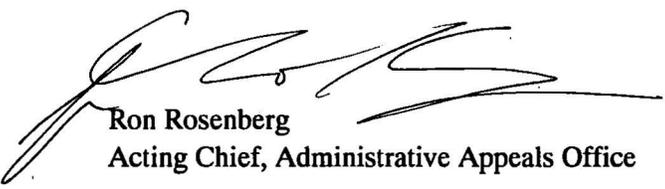
SELF-REPRESENTED

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, 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 any 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

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

The applicant is a native and citizen of China who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for knowingly assisted or aided any other alien to try to enter the United States in violation of law. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(d)(11) of the Act in order to reside in the United States with her husband.

The Field Office Director concluded that the applicant is inadmissible under section 212(a)(6)(E) of the Act and that the applicant failed to establish that she was eligible for the waiver under section 212(d)(11) of the Act for failing to prove her relationship with her son, and denied the application accordingly. *Decision of Field Office Director*, dated April 13, 2012.

On appeal, the applicant contests inadmissibility and asserts that her son died prior to completing the immigrant visa application process. *Brief in Support of Appeal*, dated May 11, 2012. The record includes, but is not limited to, prior counsel's previous brief, the applicant and her spouse's statements, notarial certificates for the applicant's son, cremation records, travel records for the applicant's spouse, documents relating to his Household Register in China, telephone records, video chat logs, and family photographs. 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 was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under Section 212(a)(6)(E) of the Act, which 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.

...

(iii) Waiver authorized-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides, in pertinent part, that:

The [Secretary of Homeland Security] 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 such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

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In the present case, the applicant and two children, one male and one female child, were interviewed at the U.S. Consulate in Guangzhou in December 2008 regarding their immigrant visa applications. Regarding the male child, the applicant submitted a Notarial Certificate of Birth issued on April 8, 2003 in Fujian Province, which states that the applicant's purported son was born over 10 years earlier on July 21, 1992 in [REDACTED] *Notarial Certificate of Birth No.* [REDACTED] dated April 8, 2003. Although it names the applicant as the child's mother and the applicant's spouse as his stepfather, the certificate does not identify the biological father and does not indicate if the information was based on any primary evidence of the child's birth such as a hospital birth record or a contemporaneous birth certificate issued in the province where he was born. *See* 8 C.F.R. § 204.2(d)(2) (regarding primary and secondary evidence of parent-child relationships). Because the applicant submitted insufficient evidence of her parent-child relationship to her purported son, the Consulate requested genetic (DNA) test results in February 2009. The applicant subsequently responded with a letter stating that her son had died in January 2009. The applicant also submitted a notarized death certificate and a cremation permit. Upon subsequent investigation, the funeral home listed on the cremation permit stated that they did not have a record of the child's death and that the number listed on the cremation permit corresponded to a different individual. Accordingly, the applicant's visa application was denied and she was found inadmissible under section 212(a)(6)(E) of the Act.

On appeal, the applicant asserts that she is not inadmissible and that her son is deceased and when she tried to locate the staff at the funeral home who cremated her son, the management had changed and was "so chaotic that same cremation number appears." The applicant asserts that she is not to blame for the funeral home's mismanagement and that she has submitted sufficient evidence of her son's death. The applicant does not, however, submit any primary evidence or any additional secondary evidence of her biological relationship to her purported son. The delayed Notarial Certificate of Birth and the copy of the applicant's husband's Household Register in China do not establish the mother-son relationship between the applicant and the male child. Consequently, the applicant is inadmissible for having knowingly assisted or aided another alien to try to enter the United States under section 212(a)(6)(E)(i) of the Act.

To qualify for a waiver of this inadmissibility under section 212(d)(11) of the Act, the applicant must establish that she only assisted an "individual who at the time of such action was the alien's spouse, parent, son, or daughter." Because the applicant has failed to establish a parent-child relationship between herself and the male child, she is ineligible for a waiver of inadmissibility under section 212(d)(11) of the Act.

In proceedings for an application for a waiver 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.