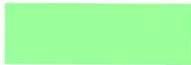


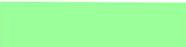
(b)(6)



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**



Date: **AUG 27 2013** Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Applicant: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application and 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 Myanmar who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act for alien smuggling. The applicant is the mother of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(d)(11) of the Act in order to visit her son in the United States.

The director found that the applicant is not eligible for a waiver of inadmissibility because she attempted to smuggle her ex-husband, who was not her spouse at the time the smuggling act occurred. The director denied the application accordingly.

On appeal, the applicant contends that the only act she committed was divorcing her husband artificially so he could enter into another marriage to receive U.S. immigration benefits. She contends that at the time she signed the divorce documents, she was aiding her husband, and therefore, she is eligible for a waiver.

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

(6) Illegal entrants and immigration violators . . .

(E) Smugglers.--

(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:

(11) The Attorney General [now, Secretary, Homeland Security, "Secretary"] 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.

Section 212(d)(11) of the Act provides that a waiver of inadmissibility is first dependent upon the applicant showing that she is seeking admission as an immediate relative or immigrant under section 203(a) of the Act. Second, the applicant must show that the individual she encouraged, induced, assisted, abetted, or aided to enter the United States in violation of law was her spouse, parent, son, or

daughter and no other individual. If this is established, the Secretary then assesses whether an exercise of discretion is warranted for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO finds the applicant’s contention that she is eligible for a waiver to be persuasive. The applicant concedes she entered into a sham divorce in order to assist her husband in marrying another individual so that he could enter the United States. As the applicant contends, at the time of the offense, she was encouraging, assisting, abetting, and aiding her spouse to enter the United States in violation of law. There is no indication in the record that the applicant committed any other act to assist her husband after the divorce was finalized. As such, the applicant assisted an individual who at the time of the offense was her spouse. *See Lopez de Jesus v. INS*, 312 F.3d 155, 162 (5th Cir. 2002) (holding that a waiver for smuggling is available only for an individual who at the time of such action was the alien’s spouse, parent, son or daughter).¹ In the present matter, the applicant seeks admission as the immediate relative parent of a U.S. citizen, and the record reflects that the individual the applicant aided to enter the United States illegally was her husband (now her ex-husband). The applicant is therefore eligible for consideration under section 212(d)(11) of the Act.

The applicant contends she is well established in Frankfurt, Germany, and has no intention of living in the United States, but wants to visit her son. According to the applicant, she has been in the hospital many times with a heart condition and her husband (ex-husband) has had brain surgery twice. She states her family has been apart for fourteen years and she would like to unite her family

¹ The AAO notes that the director erroneously relied on *Matter of Farias-Mendoza*, 21 I&N Dec. 269 (BIA 1996), for the proposition that the familial relationship must have existed at the time of the smuggling act. Rather, *Matter of Farias-Mendoza*, a case decided in 1996, not 1997 as cited by the director, held that an individual was eligible for a waiver even when the familial relationship arose *after* the smuggling act. As the Fifth Circuit Court of Appeals explained in *Lopez de Jesus*, legislative history shows that Congress acted with the “specific purpose . . . to overrule the Board’s precedent decision in [*Matter of Farias-Mendoza*].” *Lopez de Jesus*, 312 F.3d at 162 n.43. “Rejecting *Matter of Farias*, § 351(a) of the IIRIRA amended the statute by requiring that the alien have smuggled ‘an individual who at the time of such action was the alien’s spouse, parent, son or daughter. . . .’” *Id.* at 162 (emphasis in original).

once again. She states her visa applications have been denied many times and she would like to see her son's life and his accomplishments in the United States before she dies.

After a careful review of the entire record, the applicant has failed to establish sufficient grounds on which to approve her waiver for humanitarian purposes or to assure family unity.² Aside from the applicant's own statements, there is no supporting documentation on appeal establishing that the applicant should be granted a waiver for family unity or for humanitarian purposes. There is no evidence to corroborate the applicant's claims that she has been hospitalized for a heart condition or that her ex-husband has had brain surgery. In addition, there are no statements in the record from either of the applicant's two sons or her ex-husband. Furthermore, according to the applicant, her ex-husband is residing in Germany and there is no indication in the record where her younger son is currently residing. Therefore, the record does not show that granting the applicant's waiver application would reunite her family.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

² The applicant has not addressed whether a waiver is otherwise in the public interest.