

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

(b)(6)

[REDACTED]

DATE: **DEC 19 2013**

Office: HIALEAH [REDACTED]

IN RE: Applicant: [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 (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.

Thank you,

*R- [Signature]*

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Hialeah, Florida, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed as the underlying waiver application is unnecessary.

The applicant is a native and citizen of Cuba 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 knowingly encouraging, inducing, assisting, abetting, or aiding [REDACTED], her previous husband, to enter the United States in violation of law by entering into a sham marriage. The applicant seeks a waiver of inadmissibility pursuant to section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), in order to reside in the United States with her lawful permanent resident spouse and mother and U.S. citizen children.

The field office director found that as the applicant had knowingly encouraged, induced, assisted, abetted, or aided [REDACTED], an Argentinian national, to enter the United States by entering into a sham marriage. The field office director concluded that the applicant was statutorily ineligible for a waiver under section 212(d)(11) of the Act. The field office director denied the application accordingly. *See Decision of the Field Office Director*, dated March 8, 2013.

In support of the instant appeal, counsel submits a brief, evidence of the applicant's child's birth in the United States and information about country conditions in Cuba. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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:

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

On appeal, counsel contests the field office director's finding of inadmissibility pursuant to section 212(a)(6)(E)(i) of the Act. Counsel maintains that [REDACTED] entered the United States lawfully and without any assistance from the applicant and the applicant did nothing to facilitate his entry. Counsel asserts that the fraud on the part of the applicant in her prior marriage was only to facilitate [REDACTED] application for adjustment of status which is not an entry pursuant to section 212(a)(6)(E)(i) of the Act. As such, counsel asserts that the applicant is not a smuggler and is not subject to inadmissibility pursuant to section 212(a)(6)(E)(i) of the Act. *See Brief in Support of Appeal*, dated March 8, 2013.

The plain language of the statute specifies that an alien is inadmissible if she "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." *See* section 212(a)(6)(E)(i) of the Act (emphasis added). In this case, the record indicates [REDACTED], a native of Argentina, was already in the United States when he married the applicant as the record establishes that they were married in [REDACTED] Florida. While the applicant admitted to having entered into the marriage with [REDACTED] to help him obtain permanent residency in the United States through the adjustment of status process and that in return, he agreed to pay the applicant \$3000, there is no evidence the applicant assisted [REDACTED] in entering, or attempting to enter, the United States.

The AAO finds that the field office director erred in determining that the applicant was inadmissible for smuggling pursuant to section 212(a)(6)(E)(i) of the Act. Accordingly, the appeal will be dismissed as the underlying waiver application is unnecessary.

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 been met.

**ORDER:** The appeal is dismissed as the underlying waiver application is unnecessary.