



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 07 2013** OFFICE: CIUDAD JUAREZ (ANAHEIM)

FILE:

IN RE:

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

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Ciudad Juarez, Mexico (Anaheim, California), 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 Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act, 8 U.S.C. §1182(a)(6)(E)(i), for aiding and abetting an illegal alien to try to enter into the United States in violation of law. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of his ground of inadmissibility pursuant to section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), in order to live in the United States near his children.

In a decision dated October 17, 2011, the director determined the applicant had failed to establish that favorable factors outweighed unfavorable factors in his case, or that he merited a favorable exercise of discretion. The waiver application was denied accordingly.

On appeal, the applicant apologizes for violating U.S. immigration laws. He asserts his attempt to smuggle his wife into the United States was out of desperation to see his U.S. citizen children from his first marriage, and he requests U.S. lawful permanent resident status so that he can visit his U.S. citizen children and work during his stays in the United States.

Evidence contained in the record includes letters from the applicant's U.S. citizen children and academic records for his children. 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).

The record reflects that on June 9, 2001, the applicant knowingly assisted his wife in an attempt to enter the United States with a U.S. birth certificate that did not belong to her. The applicant is therefore inadmissible under section 212(a)(6)(E)(i) of the Act. The applicant does not contest his inadmissibility under section 212(a)(6)(E)(i) of the Act.

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 the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

In the present matter, the applicant seeks admission as the immediate relative parent of a U.S. citizen, and the record reflects the individual the applicant aided to enter the United States illegally was his spouse. The applicant is therefore eligible for consideration under section 212(d)(11) of the Act.

Positive discretionary factors include the applicant's two U.S. citizen children, aged 17 and 32, who reside in the United States. The record also indicates the applicant has two other adult children in the United States who do not yet have legal immigration status. Letters from the applicant's children detail their separation from the applicant for over thirteen years, their desire to have the applicant close to them, and the difficulty of visiting the applicant in Mexico due to violence in the country. The record also reflects the applicant has not attempted to enter the United States or violated U.S. immigration laws since June 2001, and he has no criminal record.

The adverse discretionary factors include the applicant's knowing assistance in his wife's attempt to enter the United States illegally in 2001. The record additionally reflects the applicant entered the United States without inspection in 1984 and that he accrued unlawful presence in the United States between 1997 and 1999. The record lacks evidence demonstrating that the applicant's U.S. citizen children are dependent upon the applicant, and no evidence corroborates assertions that it would be too dangerous for the applicant's U.S. citizen children to visit him in Mexico. Moreover, the record reflects that the applicant remarried in Mexico in 2001, he has three young children in Mexico, he owns and operates a business in Mexico, and the applicant states that he has "no intention of abandoning" his family in Mexico. He asserts that his request for lawful permanent resident status is based on his desire to visit his family in the United States and work during his visits.

The AAO finds, upon review of all of the discretionary factors in the applicant's case, that the applicant has failed to establish sufficient family-unity grounds on which to approve his waiver under section 212(d)(11) of the Act. Additionally, the evidence does not support approval of his waiver for humanitarian purposes or in the public interest.

In proceedings for application for waiver of grounds of inadmissibility, 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. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.