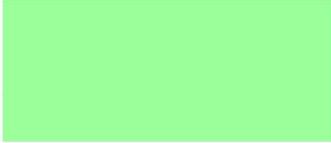




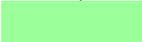
**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **MAR 13 2013**

OFFICE: GUANGZHOU

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.

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, Guangzhou, China, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

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)(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 her then spouse and children to enter the United States in violation of law. 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 children.

The Field Office Director determined that the applicant did not qualify for the waiver in section 212(d)(11) because she helped both her husband (now ex-husband) and children to enter the United States in violation of law when a waiver may be granted "to someone who assisted only one person to enter illegally." The Form I-601 was denied accordingly. *Decision of the Field Office Director*, dated February 28, 2012.

On appeal, the applicant maintains that she was forced to divorce her husband so that he could immigrate to the United States based on a subsequent marriage to a U.S. citizen and being separated from her children is the biggest punishment. *See Form I-290B*, dated March 23, 2012. 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.

The record indicates that in 2002, the applicant entered into a sham divorce so that her then husband and children would be able to immigrate to the United States based on her husband's new marriage to a U.S. citizen. The applicant goes on to state that the plan was for her to ultimately enter the United States and reunite with her ex-husband. As the applicant details,

Before my ex-husband went to the United States, he made all the decision (sic) for the whole family. What I can do is to listen to and abide by whatever he said. When he said our marriage would be a block for his going to the United States, I was unable to change his mind and had to terminate our marriage. Afterward, my ex-husband immigrated to the United States and took my three children with him....

See Letter from Pinhua Wei, dated December 29, 2011.

The AAO notes that the Field Office Director erred in determining that section 212(d)(11) applies to someone who assists "only one person to enter illegally," as there is no numerical limitation specified in that section. Section 212(d)(11) clearly indicates that a waiver may be granted if the individual is "the alien's spouse, parent, son, or daughter (and no other individual)," and in the present case, the applicant assisted her husband at the time and children to enter the United States. *See Matter of Farias-Mendoza, 21 I&N Dec. 269, 272 (BIA 1996)* (summarizing Service's position that the statute sets out the specific family members and the word 'only' emphasizes "the exclusive nature" of the listed relationships, whereas the parenthetical "and no other individual" underscores the qualifying relationships). In the present matter, the applicant seeks admission as the immediate relative parent of a U.S. citizen, and the record reflects the individuals the applicant aided to enter the United States illegally were her husband (now her ex-husband) and children. The applicant is therefore eligible for consideration under section 212(d)(11) of the Act.

The record establishes that the applicant's three children are residing in the United States. As noted by the applicant, had she not granted her then husband a divorce, she would have been scolded and beaten every day. Since her children's relocation to the United States, the applicant details that every day is painful. She notes that she dreams of them and having to face an empty home causes her to cry. She concludes that to be separated from her children for many years is the biggest punishment. *Supra* at 2. The AAO finds that based on family unity and humanitarian reasons, the applicant is statutorily eligible for a waiver under section 212(d)(11) of the Act.

With regard to the positive discretionary factors, the record reflects that the applicant's three children reside in the United States. The record further establishes that the applicant has been separated from her children since 2002. The record also reflects that the applicant has not attempted to enter the United States or violated U.S. immigration laws since 2002, and she has no apparent criminal record. Further, the applicant states that she was forced to divorce her husband or be subject to abuse. Finally, the record establishes that the applicant's U.S. citizen son has

petitioned, and obtained approval, of the Form I-130, Petition for Alien Relative on behalf of his mother. The adverse discretionary factors include the applicant's knowing assistance in her then husband's (and children's) entry to the United States based on a sham divorce and the applicant's intention to resume residence with her now ex-husband upon relocating to the United States.

While the AAO does not condone the applicant's actions in violation of U.S. immigration law, the AAO nevertheless finds that the applicant qualifies for a waiver of section 212(a)(6)(E)(i) in its discretion to assure family unity and for humanitarian purposes. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds 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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.