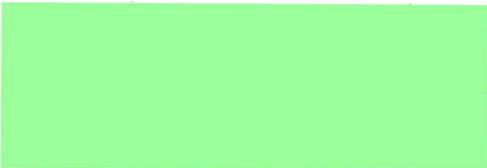




U.S. Citizenship
and Immigration
Services

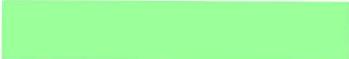
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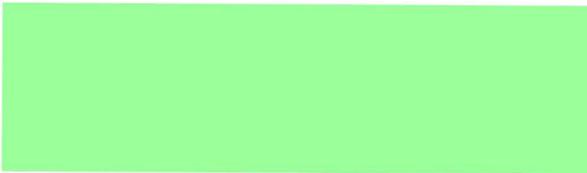
OFFICE: NEW DELHI

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:



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, New Delhi, India 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 India 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 his daughter to enter the United States in violation of law. The applicant does not contest this finding of inadmissibility on appeal. Rather, he 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 his U.S. citizen daughter.

In a decision dated May 31, 2012, the field office director determined that a waiver should not be approved for humanitarian purposes or public interest. In addition, the field office director found that the approval of a waiver would only break up the family unity. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was thus denied accordingly. *Decision of the Field Office Director*, dated May 3, 2012.

On appeal, counsel contends that the field office director applied the incorrect standard in adjudicating the applicant's waiver. Counsel maintains that the field office director's denial was based on the lack of hardship to the applicant's daughter when the standard of review required an analysis of family unity and public interest. *See Brief in Support of Appeal*, dated July 27, 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.

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 daughter. The applicant is therefore eligible for consideration under section 212(d)(11) of the Act.

To begin, on appeal counsel has failed to address statutory eligibility for a waiver based on humanitarian purposes. Nor has counsel provided supporting documentation establishing that the applicant should be granted a waiver based on public interest. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As for family unity, the only reference to said factor is in the field office director's decision. As the field office director notes, "in reference to assuring family unity, three out of the four married children are in India. The approval of waiver would only break up the family unity...." *Supra* at 2. The AAO concurs with the field office director that the record does not establish that the applicant should be granted a waiver based on family unity. Counsel has not submitted any supporting documentation on appeal establishing that the applicant should be granted a waiver as a result of family unity. As noted above, assertions without documentary evidence do not suffice to establish the applicant's burden of proof. The AAO notes that the applicant has a wife and three children residing in India. Only one daughter, currently in her mid-30s, is residing in the United States. She has not resided in India with or near the applicant since 1999. Relocating abroad, as the field office director notes, will break up the family unity that the applicant has had with his other three children, all residing in India.

The applicant has failed to establish sufficient family unity grounds on which to approve his waiver under section 212(d)(11) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. 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.