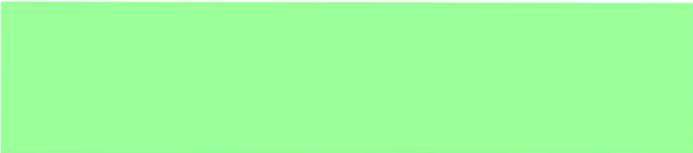




(b)(6)



DATE: **MAR 28 2013**

Office: GUANGZHOU, CHINA

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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 waiver application was denied by the Field Office Director, Guangzhou, China, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 having knowingly encouraged, induced, assisted, abetted or aided another alien to enter or to try to enter the United States in violation of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen son and U.S. citizen sister.

The Field Office Director concluded that the applicant was ineligible for a waiver under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), because the applicant submitted false documentation, including a false marriage certificate and two false birth certificates, and attempted to use the false documentation to represent two persons as being his step-children. The applicant stated at an interview with the U.S. Consulate in Guangzhou that the two persons were not and never were his children. *See Decision of Field Office Director*, dated May 10, 2012.

On appeal, counsel contends that at the time of the applicant's immigrant visa interview on April 26, 2006 at the U. S. Consulate in Guangzhou, China, the applicant was married to the mother of the two persons, and that those two persons were his step-children, and thus he is eligible for a waiver under section 212(d)(11) of the Act.

The record includes, but is not limited to, a brief filed by applicant's counsel in support of the Form I-290B, Notice of Appeal or Motion; a letter from applicant's counsel in support of the Form I-601, Application for Waiver of Grounds of Inadmissibility, a statement from the applicant, and information from the U.S. Consulate in Guangzhou regarding the applicant's visa application. The entire record was reviewed and considered in rendering 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) of the Act provides, in pertinent part:

- (11) The Attorney General 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 applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, the applicant bears the burden of demonstrating by a preponderance of the evidence that he is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

The applicant claims that he married his first wife, the mother of the applicant's U.S. citizen son, in 1979, and divorced her 1998. The applicant claims that he married his second wife in 2004, and that his second wife had two children from a previous marriage. The record indicates that the applicant had his initial interview with the U.S. Consulate in Guangzhou, China on April 26, 2006, and presented documents including a marriage certificate to his second wife, and birth certificates for the two children of the applicant's second wife. The applicant states that he divorced his second wife in 2007.

The record indicates that the U.S. Consulate in Guangzhou, China determined that the marriage certificate to the second wife, and the two birth certificates of the second wife's children that the applicant presented to the consulate, were false documents. The record further indicates that, during an interview at the U.S. Consulate in Guangzhou, China, the applicant stated that the two children listed on the immigrant visa petition filed by the applicant's son were not his children and never were his children.

Therefore, the AAO finds that the applicant has failed to meet his burden to demonstrate that he is not inadmissible under section 212(a)(6)(E)(i) of the Act.

As noted above, a waiver under section 212(d)(11) of the Act is available only to individuals whose smuggling violations involved encouraging, inducing, assisting, abetting, or aiding a spouse, parent, son, or daughter to enter the United States unlawfully. In the present case, the applicant attempted to assist two persons to try to enter the United States in violation of law by claiming that they were his step-children, and submitted false documentation to support that attempt. The applicant later admitted the two were not and never were his children. In that the two persons are not among the categories of relatives listed in section 212(d)(11) of the Act, the applicant is statutorily ineligible to apply for a waiver of his 212(a)(6)(E)(i) inadmissibility for attempting to assist them to enter the United States in violation of law, and is permanently barred from entering the United States.

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In proceedings for application for waiver of grounds of inadmissibility under section 212(d)(11) of the Act, the burden of proving eligibility is entirely on the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here the applicant has not met that burden and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.