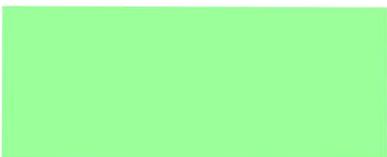
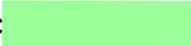


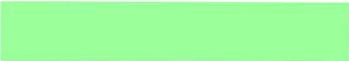
(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: **MAY 31 2013** OFFICE: BALTIMORE, MARYLAND

FILE: 

IN RE: Applicant: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the waiver application. The applicant appealed the District Director's decision, and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. On March 25, 2013, the applicant filed correspondence to the AAO regarding the merits of his appeal. The AAO, on its own motion, will reopen and reconsider its previous decision in accordance with 8 C.F.R. § 103.5(a)(5). The motion will be granted and the previous decision of the AAO is withdrawn as the underlying application is unnecessary.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for having assisted an alien to enter the United States in violation of the law. As the smuggled alien was the applicant's brother, the District Director concluded the applicant had failed to meet the requirements for a waiver as stated in section 212(d)(11) of the Act and denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO affirmed the District Director's decision on appeal.

In subsequent correspondence the applicant asserts he timely submitted a statement from his brother, attesting to the circumstances concerning his involvement with his brother's entry into the United States. The applicant also asserts additional documentation from his treating medical professional demonstrates the effect his medical conditions have on his mental functions. *See Applicant's Letter*, dated March 25, 2013.

The record includes, but is not limited to: correspondence and letters of support from the applicant, his spouse, their religious community, and his brother; identity, medical, employment, and financial documents; photographs; and Internet articles about the applicant's medical conditions. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(E) Smugglers.-

(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 the Secretary 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 any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and 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 District Director determined the applicant financially assisted his brother to enter the United States without inspection around January 1999. On appeal, the applicant indicated he initially agreed to lend his brother approximately \$900 for expenses related to his entry but did not do because he did not have the money. The applicant also indicated he forgot this detail after his interview with U.S. immigration officials as he suffers from high blood glucose and cholesterol levels and has been prescribed statins for his medical conditions, which the U.S. Food and Drug Administration has determined could result in memory loss and confusion. In support of his contentions, on appeal, the applicant submitted a letter from his spouse, labels from his medical prescriptions, medical laboratory results, and articles concerning statin drugs and the link between diabetes and memory impairment.

Subsequently, the applicant submitted an affidavit from his brother, who explained that he entered the United States in February 1999. According to the applicant's brother, a month earlier, in January 1999, he had asked the applicant for a \$900 loan for his expenses. Though the applicant initially indicated that he would lend his brother the money, he never did; the applicant's brother found the money elsewhere. *See Affidavit*, dated July 23, 2012. The applicant also submitted a letter from his treating medical professional, Lynn C. Mays, who states that for over 10 years she has treated the applicant for diabetes, hypertension and hypercholesterolemia. She explains that he sometimes "has been without medication for years and found to have high fluctuating blood sugar levels. Uncontrolled [b]lood sugar levels and medications for treatment of high cholesterol can impair memory function. . . . He remains on medications for diabetes, hypertension and hypercholesterolemia." *See Medical Letter*, dated March 25, 2013.

Based on the foregoing, the AAO finds the applicant did not assist his brother in entering the United States illegally. Accordingly, he is not inadmissible under section 212(a)(6)(E)(i) of the Act, and the previous finding regarding alien smuggling under section 212(a)(6)(E)(i) of the Act will be withdrawn. The waiver application filed pursuant to section 212(d)(11) of the Act is therefore not necessary.

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 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11). Here, the applicant is not required to file for a waiver of inadmissibility. Accordingly, the motion will be granted and the previous decision of

(b)(6)



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the AAO is withdrawn as the underlying application is not necessary.

ORDER: The motion is granted. The previous decision of the AAO is withdrawn. The application is unnecessary.