

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

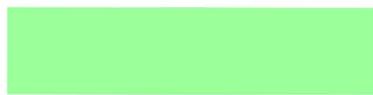


(b)(6)

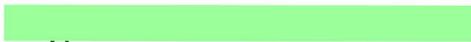


Date: **NOV 21 2013**

Office: NEBRASKA SERVICE CENTER



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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision withdrawn. The underlying waiver application is approved.

The applicant is a native and citizen of Myanmar who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act for alien smuggling. The applicant is the mother of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(d)(11) of the Act in order to visit her son in the United States.

The director found that the applicant is not eligible for a waiver of inadmissibility because she attempted to smuggle her ex-husband, who was not her spouse at the time the smuggling act occurred. The director denied the application accordingly. The AAO found that the applicant is eligible to apply for a waiver because at the time of the offense, she was encouraging, assisting, abetting, and aiding her spouse to enter the United States in violation of law and there was no evidence she committed any other act to assist her husband after their divorce was finalized. Nonetheless, the AAO dismissed the appeal because the applicant provided no corroborating evidence to establish that a waiver should be granted for family unity or humanitarian purposes.

On motion, the applicant contends she did not provide additional documents to support her written statement because she is working on her case without professional assistance. The applicant submits additional documentation with her motion to support her waiver application.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant has submitted new documentary evidence to support her waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

Section 212(a)(6)(E) of the Act provides:

(6) Illegal entrants and immigration violators . . .

(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, in pertinent part:

(11) The Attorney General [now, Secretary, 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.

Section 212(d)(11) of the Act provides that a waiver of inadmissibility is first dependent upon the applicant showing that she is seeking admission as an immediate relative or immigrant under section 203(a) of the Act. Second, the applicant must show that the individual she encouraged, induced, assisted, abetted, or aided to enter the United States in violation of law was her spouse, parent, son, or daughter and no other individual. If this is established, the Secretary then assesses whether an exercise of discretion is warranted for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The AAO previously found that the applicant seeks admission as the immediate relative parent of a U.S. citizen and that the individual she aided to enter the United States illegally was her husband (now ex-husband). The sole issue on motion is whether a favorable exercise of discretion is warranted for humanitarian purposes, to assure family unity, or is otherwise in the public interest.

After a careful review of the entire record, including the evidence submitted with the motion, the AAO finds that the applicant warrants a favorable exercise of discretion to assure family unity.

The AAO previously found that there was no supporting documentation in the record establishing that the applicant should be granted a waiver for family unity or for humanitarian purposes. Specifically, the AAO found that there was no evidence corroborating the applicant's claims that she has been hospitalized for a heart condition or that her ex-husband had brain surgery, and that there were no statements in the record from either of the applicant's two sons or her ex-husband showing that granting the applicant's waiver application would reunite her family. On motion, the applicant has submitted letters from her two sons and her ex-husband corroborating the applicant's contention that their family has been apart for more than fourteen years. All three letters note the applicant's ill health and that her last wish is to reunite her family in the United States before she dies. A letter from the applicant's younger son, who lives in Germany, states that he would join the family to visit his brother in the United States. In addition, newly submitted medical records and photographs

corroborate the applicant's contentions that she has been hospitalized for heart problems and that her ex-husband has undergone brain surgery. A letter submitted from the applicant's psychiatrist also shows she has "paranoid-hallucinatory psychotic disease . . . because of social circumstances" as a refugee who suffers from marital problems and distance from her children. According to the psychiatrist, the applicant is in regular treatment, is able to travel, and should be permitted to visit her children for medical and psychological reasons.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's attempt to assist her then-husband into the United States in violation of law. The favorable and mitigating factors in the present case include the applicant's family ties to the United States, including her U.S. citizen son; the hardship to the applicant's family if she were refused admission, particularly considering they have been separated for numerous years; the hardship to the applicant, especially considering her mental and physical problems; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion to assure family unity is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The motion is granted and the prior AAO decision dismissing the appeal is withdrawn.