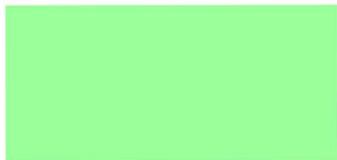


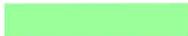


U.S. Citizenship
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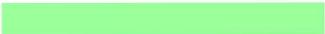
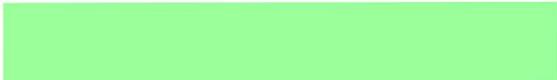
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DATE: OCT 07 2013 Office: NEBRASKA SERVICE CENTER

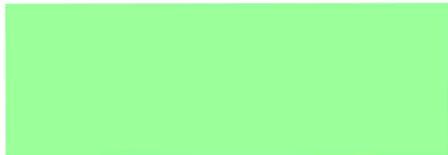
FILE: 

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:



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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E), for being an 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. The applicant's spouse is a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States.

The director concluded that the applicant had failed to establish that she was eligible for a waiver under section 212(d)(11) of the Act, as the individual that she assisted in trying to enter the United States in violation of law was not her spouse, parent, son or daughter; and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated January 18, 2013.

On appeal, counsel asserts that the applicant never encouraged, induced, assisted, abetted, or aided any individual to enter the United States in violation of law; and the waiver should be granted for humanitarian purposes. *Form I-290B, Notice of Appeal or Motion* (Form I-290B), received February 19, 2013.

The record includes, but is not limited to, Form I-290B, counsel's brief, a medical letter, the applicant's immigration documents, photographs, and a psychological evaluation of the applicant's spouse. 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, that:

(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).

The record reflects that the applicant was the beneficiary of a Form I-129F, Petition for Alien Fiancée (Form I-129F), filed by her fiancé (now her spouse) on June 12, 2006, approved on July 26, 2006 and administratively closed on May 26, 2011; and the Form I-129F lists [REDACTED] as the child of the applicant. During the applicant's September 28, 2006, visa interview, she stated that [REDACTED] was not her biological child and that the biological mother of the child is still married to her spouse.

The record further reflects that the applicant filed Form DS-156, Nonimmigrant Visa Application, on or around October 2, 2006; and she stated on the Form DS-156 that her stepdaughter, [REDACTED]

would be traveling with her to the United States. The record includes a Form DS-156 for date October 2, 2006, which states that she will be travelling with her stepmother, the applicant, and that the applicant's spouse is her father.

The record does not include evidence that is either the daughter or stepdaughter of the applicant or the daughter of the applicant's spouse. The record also lacks evidence that is the applicant's spouse's niece, as indicated in the director's decision. The record reflects that the applicant assisted and aided in trying to enter the United States by falsely listing as her stepdaughter on her Form DS-156. The applicant is therefore inadmissible under section 212(a)(6)(E) of the Act.

Section 212(d)(11) of the Act provides, in pertinent part, that:

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 the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

Counsel states that the applicant never made any written or verbal misrepresentations; the consulate falsely accused the applicant of stating that her spouse was already married; the applicant never attempted to mislead the consulate into believing that her spouse's niece was his daughter; and the applicant presented her spouse's niece's birth certificate to the consulate, which identifies the niece's parents. Counsel states that the applicant's spouse represented to the applicant that he considered his niece to be his adopted daughter, consistent with customary beliefs in Nigeria; the mistaken belief that the alien was entitled to enter the United States legally can be a defense for a suspected smuggler; and case law requires an affirmative act of assistance or encouragement for alien smuggling.

Counsel cites to *Tapucu v. Gonzales*, 399 F.3d 736 (6th Cir. 2005) and *Altamirano v. Gonzales*, 427 F.3d 586 (9th Cir. 2005) in asserting that the applicant did not commit an affirmative act to assist in the smuggling of her spouse's niece, as required for a finding of inadmissibility under section 212(a)(6)(E)(i) of the Act. The court in *Altamirano v. Gonzales* found that for section 212(a)(6)(E)(i) of the Act to apply, an "affirmative act of help, assistance or encouragement" must be provided to the individual who is attempting to enter the United States illegally. *Id.* at 592. The court in *Tapucu v. Gonzales* states that an affirmative and illicit act of assistance is required. *Tapucu*, 399 F.3d at 740.

The AAO notes counsel's assertions. As mentioned, the applicant misrepresented her relationship to and the filing of her Form DS-156 with this misrepresentation before the U.S. Department of State was an affirmative act of assistance or encouragement for alien smuggling. The applicant signed and dated her Form DS-156, in which she named as her stepdaughter. There is no indication that she submitted 's birth certificate to the

consular officer at the time of her fiancée visa application and interview or that the consulate made false accusations against the applicant. Counsel has not provided the birth certificate and it is not in the record. The record also does not include evidence corroborating counsel's claims that the applicant mistakenly believed that [REDACTED] was entitled to enter the United States and that her spouse considered the child his daughter, in accordance with customary beliefs. Without documentary evidence to support the aforementioned claims, the assertions of counsel will not satisfy the applicant's burden of proof. The 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). Therefore, counsel's claims do not overcome the finding of inadmissibility.

Section 212(d)(11) of the Act does not apply to the applicant, as the person she assisted and aided in trying to enter the United States is not listed in this section of the Act as a qualifying relative. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.