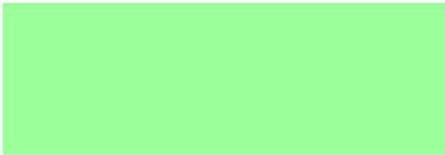


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE:

OCT 28 2013

Office: NEBRASKA SERVICE CENTER

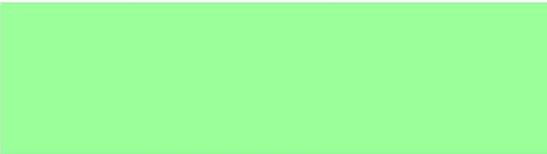
FILE:

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 (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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for knowingly encouraging, inducing, assisting, abetting or aiding her children and her son-in-law to enter the United States in violation of the law. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. She seeks a waiver of inadmissibility (Form I-601) pursuant to section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), in order to reside with her husband in the United States.

On May 28, 2013, the director denied the Form I-601 application for a waiver, concluding that the applicant is statutorily ineligible for a waiver of inadmissibility as a result of her inadmissibility under section 212(a)(6)(E)(i) of the Act for smuggling involving an individual other than her own children.

On appeal, counsel for the applicant states that the applicant is not inadmissible under section 212(a)(6)(E) of the Act, and if she is, she is eligible for a waiver under section 212(d)(11) of the Act, as the individuals involved were family members.

In support of the waiver application, the record includes, but is not limited to: briefs by counsel; biographical information for the applicant, her spouse, and the applicant's children; an affidavit from the applicant; affidavits from the applicant's daughters; an affidavit from the applicant's son-in-law; and documentation of the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

We will first address the applicant's inadmissibility and eligibility for a waiver of inadmissibility.

The applicant was found to be inadmissible under section 212(a)(6)(E) of the Act, which states, in relevant 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.

(ii) Special rule in the case of family reunification. Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien,

before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

The record reflects that on May 24, 2006 the applicant attempted to gain entry to the United States without inspection with her three minor children and her son-in-law. The applicant's children were 13, 15, and 16 at the time of the attempted entry. The record does not reflect the age of the applicant's son-in-law. On appeal, counsel states that the applicant was not a "coyote" and did not "smuggle" her children. He also states that even were the applicant found to be inadmissible under section 212(a)(6)(E), she would be eligible for a waiver under section 212(d)(11) as the individuals involved were her family members. Counsel's argument that the applicant was not a "coyote" and that the group was traveling with two coyotes does not change the record which indicates that the applicant aided, assisted, or abetted her children and son-in-law to unlawfully enter the United States. The record contains statements from the applicant's three children, who were minors at the time, stating that their mother was "not a coyote" and did not guide them in crossing the border. The Act, however, does not require that the applicant be a "coyote" or "guide" unauthorized individuals across the border. The Act states that an individual is inadmissible if they "at any time knowingly ha[ve] encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law." The record indicates that the applicant "encouraged, induced, assisted, abetted, or aided" her children and her son-in-law to try to enter the United States in violation of the law. As a result, she is inadmissible under section 212(a)(6)(E) of the Act. The Act provides a limited waiver for this ground of inadmissibility.

Section 212(d)(11) States, in relevant 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) of this section 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 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (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.

Although the applicant would be eligible to apply for a waiver under section 212(d)(11) of the Act if the incident for which she is inadmissible only involved her three children, the incident also

involved her then 16-year-old daughter's "husband."¹ The Act does not define "parent" to encompass the relationship between a mother-in-law and son-in-law. Thus, the applicant is not eligible for a waiver for encouraging, inducing, assisting, abetting, or aiding" this individual to try to enter the United States unlawfully. Accordingly, the applicant remains inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act, and is not eligible for a section 212(d)(11) exception to a section 212(a)(6)(E)(i) of the Act.² Thus, no purpose is served in adjudicating her waiver application, which is properly denied as a matter of discretion.

In application proceedings, 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.

¹ The record does not contain biographical information regarding this individual indicating his age or marital status at the time of the incident.

² Counsel provided a copy of email correspondence with the U.S. Department of State, Visa Office, Legalnet, which he states grants permission for the applicant to file a waiver. The email correspondence in the record indicates that in one email Legalnet advised counsel of the applicant's inadmissibility and ineligibility for a waiver. And, in a separate redacted email simply provided general instructions on the the procedure for filing a waiver application, "if [counsel] would like to have [his] client file a wiaver of her INA 212(a)(6)(E) ineligibility...." This documentation does not suggests that the applicant is eligible for a waiver of inadmissibility.