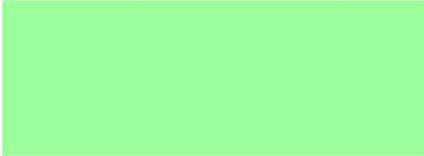




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 29 2014**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility Section 244(c)(2)(A)(ii) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(c)(2)(A)(ii).

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of El Salvador, applying for temporary protected status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The applicant was found to be inadmissible to the United States under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for aiding and abetting an alien to enter the United States at a time and place other than as designated by an immigration officer. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen daughter.

In a decision, dated June 21, 2013, the Acting Director determined that the applicant was statutorily inadmissible to the United States without the ability to apply for a waiver because the person he aided in entering the United States was not, at the time of entry, his spouse, parent, or child. The acting director cited to section 244(c)(2)(A)(ii) of the Act as the source for this conclusion, but also cited part of section 212(d)(11) of the Act, relating to admissibility waivers, in making her determination. The waiver application was denied accordingly.

On appeal, counsel asserts that the decision by the acting director is incorrect in that it finds the applicant to be statutorily ineligible for a waiver and withdraws his temporary protected status. Counsel states that the acting director's decision erroneously quotes section 244(c)(2)(A)(ii) of the Act as stating that the waiver only applies when the person smuggled was, at the time, the spouse, child, or parent of the applicant. Counsel states further that the record shows the applicant warrants a waiver as he has a U.S. citizen daughter and other extended family in the country; has a good work history in the United States; enjoys the support of his community; and country conditions in El Salvador warrant the waiver. Counsel requests that both the applicant's waiver application and the withdrawal of the applicant's temporary protected status be reviewed on appeal.¹

Section 244(c)(2) of the Act provides, in pertinent part:

(A) Waiver of certain grounds of inadmissibility.—

In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)—

- (i) the provisions of paragraphs (5) and (7)(A) of section 1182 (a) of this title shall not apply;

¹ The AAO will not review the decision to withdraw the applicant's Temporary Protected Status in this decision as it is not on appeal. However, because the outcome of this appeal is favorable to the applicant, we will return the applicant's case to the director for appropriate action regarding the TPS application.

- (ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 1182 (a) of this title in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but
- (iii) the Attorney General may not waive—
 - (I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,
 - (II) paragraph (2)(C) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana, or
 - (III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) Aliens ineligible- An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that—

- (i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or
- (ii) the alien is described in section 1158 (b)(2)(A) of this title.
- (iii) except as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

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

- (i) 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, 8 U.S.C. § 1182(d)(11), provides:

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

8 C.F.R. § 244.3 states:

- (a) Grounds of inadmissibility not to be applied. Paragraphs (4), (5) (A) and (B), and (7)(A)(i) of section 212(a) of the Act shall not render an alien ineligible for Temporary Protected Status.
- (b) Waiver of grounds of inadmissibility. Except as provided in paragraph (c) of this section, USCIS may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver.
- (c) Grounds of inadmissibility that may not be waived. USCIS may not waive the following provisions of section 212(a) of the Act:
 - (1) Paragraphs (2)(A)(i), (2)(B), and (2)(C) (relating to criminals and drug offenses);
 - (2) Paragraphs (3)(A), (3)(B), (3)(C), and (3)(D) (relating to national security); or
 - (3) Paragraph (3)(E) (relating to those who assisted in the Nazi persecution).

The record reflects that on November 24, 2006 the applicant assisted his then girlfriend, now his wife, to enter the United States in violation of law. He is, therefore, inadmissible under section 212(a)(6)(E) of the Act and requires a waiver of inadmissibility.

The proper sections of law relevant to the applicant's application are section 244(c)(2) of the Act and 8 C.F.R. § 244.3 because, as stated explicitly by the statute, these are the sections of law applicable to waivers of inadmissibility for applicants for Temporary Protected Status. Section 212(d)(11) of the Act is applicable to applicants seeking admission as a lawful permanent resident or immigrant. Thus, the applicant is eligible to apply for a waiver of inadmissibility under section 244(c)(2) of the Act and section 212(d)(11) of the Act does not apply in his case.

The record indicates that the applicant left El Salvador in 1999 and has been in the United States ever since. The record also indicates that the applicant has at least one U.S. citizen child and numerous relatives who are U.S. citizens. The record includes documentation of country conditions in El Salvador. The record states that rising poverty and violence are significant problems in El

Salvador and of particular concern is gang violence. The most current U.S. State Department Travel Warning for El Salvador, dated August 9, 2013, states that crime and violence are serious problems throughout the country and in 2012, El Salvador had one of the highest per capita murder rates in the world, including 24 U.S. citizens being murdered since 2010. The warning indicates that the Government of El Salvador lacks sufficient resources to properly investigate and prosecute cases and to deter violent crime. In addition, the warning states that transnational criminal organizations conduct narcotics, arms trafficking, and other unlawful activities throughout the country and use violence to control drug trafficking routes and carry out other criminal activity, as well as other criminals, acting both individually and in gangs, commit crimes such as murder-for-hire, carjacking, extortion, armed robbery, rapes, and other aggravated assaults. The warning also notes that extortion is a serious and very common crime in El Salvador. The warning recommends a significant vigilance and hindrance in one's activities to guard against crime in the country as the location and timing of criminal activity is unpredictable. Thus, the country conditions in El Salvador sufficiently establish that the high rate of violent crime, in particular crimes involving gang violence or transnational criminal organizations, combined with the government of El Salvador's lack of resources to deter, investigate, and prosecute these crimes, has led to a significant physical security risk in the country. This risk combined with the fact that the applicant has not been to El Salvador for almost 15 years and he has family and community ties to the United States, including a U.S. citizen child that he would be separated from upon his removal, provides adequate justification for waiving the applicant's inadmissibility for humanitarian purposes and family unity.

However, the grant or denial of the above waiver does not turn only on whether the applicant has established sufficient humanitarian and familial concerns. It also depends on a determination that the applicant merits a favorable exercise of discretion by the Secretary of Homeland Security. Because the applicant was found statutorily ineligible for the waiver, the acting director did not reach the issue of discretion.

The favorable factors in this matter are the conditions in El Salvador that the applicant would face if he were returned; the applicant's family ties to a U.S. citizen child and numerous other U.S. citizen family members; the applicant's lack of any criminal record beyond the incident of smuggling; and, as attested to in several character reference letters in the record, the applicant's attributes as a honest and hard-working member of society. The unfavorable factor in this matter is the aid the applicant provided in smuggling his girlfriend and others into the United States. The AAO finds that the humanitarian concerns raised by the prospect of returning the applicant to El Salvador outweigh the unfavorable factor in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 244(c)(2)(A), the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.