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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 2 5 2014 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: APPLICANT:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B), and section 212(d)(11) of the 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 Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Director of the 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 Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II) for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The director also found the applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having re-entered the United States without inspection after more than one year of unlawful presence. Lastly, the applicant 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 having paid a smuggler to assist his current spouse to unlawfully enter the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen children.

The director concluded that the applicant was not eligible for a waiver of alien smuggling under section 212(d)(11) of the Act, as the person the alien helped smuggle in 1993 was not at the time his spouse, parent, son, or daughter. *See director's decision,* December 4, 2013. In addition to inadmissibility for alien smuggling, the director concluded that the applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act, and he was not presently eligible for permission to reapply for admission, as his last departure occurred in April 2013. *Id.* The application was accordingly denied. *Id.*

On appeal, counsel submits: a brief; two marriage certificates; three birth certificates; an affidavit to amend a birth record; and a letter from the applicant's employer. In the brief, counsel contends that the woman the applicant helped smuggle in 1993 was actually his wife at the time, so he qualifies for a waiver of alien smuggling pursuant to section 212(d)(11) of the Act. Moreover, counsel contends the applicant should be eligible to adjust status in spite of his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, as he does not have a prior order of removal, and that *Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006) should not be relied upon as it is contrary to the law and congressional intent.

The record includes, but is not limited to: the documents listed above; evidence of birth, marriage, employment, and citizenship; U.S. federal income tax records; other financial documents; and other applications and petitions. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6) of the Act states, 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) of this section.

Section 212(d)(11) of the Act provides:

> The [Secretary] may, in [her] 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.

Under oath, the applicant admitted in an April 25, 2013, consular interview, that in 1993 he paid a person to smuggle the woman who is now his wife (his wife), into the United States without inspection. The applicant's inadmissibility under section 212(a)(6)(E) of the Act is not contested on appeal. We therefore affirm the director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(E) of the Act. For this inadmissibility, the applicant requests a waiver under section 212(d)(11) of the Act.

On appeal, counsel contends the applicant and his wife were actually married at the time of the offense. Counsel explains that they were married in the Catholic Church in Mexico on December 19, 1989. Counsel concludes that the applicant is therefore eligible for a waiver under section 212(d)(11) of the Act, as the person he helped smuggle was, at the time of the offense, his wife. In support, the applicant submits a "Record of Marriage" issued in 2013.

Though the applicant established that he was married in a Catholic Church in Mexico on October 9, 1989, he has not provided any support for counsel's assertion that this October 9, 1989, marriage, was legally recognized in Mexico. Without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The website of the U.S. Consulate in Matamoros, Mexico, states in pertinent part:

> In Mexico, only civil marriage is recognized as legal. Persons wishing to do so may also have a religious ceremony, but this is without legal effect, and in no way replaces the obligatory civil marriage. A civil wedding in Mexico is fully valid for legal purposes in the U.S., but a religious ceremony without the civil ceremony is not, as U.S. law only recognizes marriages which are valid in the country in

which they take place. http://matamoros.usconsulate.gov/service/information-on-mexico/marriage-requirements-in-matamoros.html

In addition, the website of the Mexican Embassy in Canada states, "In Mexico only civil marriages are recognized as legal. A civil marriage in Mexico is fully valid for legal purposes worldwide." http://embamex.sre.gob.mx/canada_eng/index.php/marriage-in-mexico

As the applicant has not demonstrated he was married according to Mexican law at the time of the offense, we cannot find that the applicant assisted his spouse in entering the United States without inspection for purposes of a waiver under section 212(d)(11) of the Act.

The Immigration and Nationality Act makes clear that a foreign national must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act. *See* also 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). See *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008). See *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). In light of the evidence of record, we affirm the director's finding that the applicant has not met his burden in establishing he was considered legally married to his wife when he assisted her in entering the United States without inspection in 1993.

We therefore affirm the applicant is inadmissible under section 212(a)(6)(E) of the Act for having knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter the United States in violation of law. As we also conclude the applicant has not shown that the woman he encouraged, induced, assisted, abetted, or aided in entering the United States without inspection was at the time of the offense his spouse, parent, son, or daughter, we affirm the director's finding that the applicant is not eligible for a waiver under section 212(d)(11) of the Act.

Accordingly, the applicant is statutorily ineligible for a waiver under section 212(d)(11) of the Act, and no other waiver is available for this ground of inadmissibility. As such, no purpose would be served in adjudicating his waiver under section 212(a)(9)(B) of the Act, as the applicant is permanently inadmissible under section 212(d)(11) of the Act.

In addition to the applicant's permanent inadmissibility under section 212(d)(11) of the Act, we affirm the director's finding that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act. Section 212(a)(9) of the Act states, in pertinent part:

....

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission...

In this case, the record reflects that the applicant admitted under oath in his April 25, 2013, interview, that he entered the United States without inspection in February 1990 and departed the country in 1996. The applicant added that he re-entered the United States without inspection in April 1997, and returned to Mexico in June 1998. He attested that he subsequently re-entered the United States without inspection for a third time in January 2000, and departed in April 2013. The applicant accrued more than one year of unlawful presence from the date he entered in April 1997 until June 1998, and subsequently entered the United States without inspection in January 2000. The applicant does not contest these facts.

Counsel contends the applicant is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act because he does not have a prior removal order, and that he could have been eligible to adjust under section 245(i) of the Act, 8 U.S.C. § 1255(i). As discussed above, inadmissibility under section 212(a)(9)(C)(i)(I) of the Act does not require a prior removal order, as it only requires more than one year of unlawful presence and subsequent re-entry without admission. Furthermore, whether or not the applicant was previously eligible to adjust status under section 245(i) of the Act is not relevant to these proceedings. The applicant is no longer eligible to adjust status pursuant to that section because he is not physically present in the United States. *See section 245(i)(I) of the Act*. Counsel also claims that the applicant is eligible for an I-212 waiver, because the Secretary of the U.S. Department of Homeland Security ("DHS") has the authority to grant I-212 waivers. Although we agree that DHS has the authority to grant waivers, an alien must be eligible under current law and policy for the waiver to be granted. In this case, based on his inadmissibility under sections 212(a)(6)(E) and 212(a)(9)(C)(i)(I) of the Act, he is not eligible for such relief to be granted.

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 not been met.

ORDER: The appeal is dismissed.