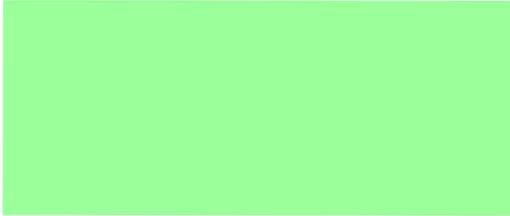


(b)(6)

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



Date: **JUN 11 2014** Office: NEBRASKA SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(11)

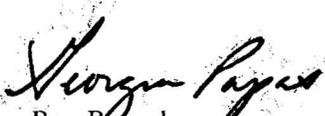
ON BEHALF OF APPLICANT:
[Redacted]

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. The matter 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)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly assisted another alien to try to enter the United States in violation of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Director concluded that the applicant was ineligible for a waiver under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), because the applicant “admitted to knowingly contributing to the smuggling of an alien,” and the alien was someone other than her spouse, parent, son or daughter. *See Decision of the Director*, dated May 4, 2013.

On appeal, counsel contends that the applicant did not admit to knowingly contributing to the smuggling of an alien; the applicant admitted to a consular officer that she knows alien smuggling is illegal. Although counsel refers to a brief “to follow” on the Form I-290B, Notice of Appeal or Motion (Form I-290B), no brief appears in the record. The record therefore is considered complete as of the date of this decision.

The record includes, but is not limited to: Form I-290B; Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601); a statement from the applicant’s spouse; and country-conditions information about Mexico. The record includes newspaper articles in Spanish that have not been translated. The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to U.S. Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. These articles, therefore, were not considered. The remaining record, however, was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(E) of the Act provides, in pertinent part:

- (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) of the Act provides, in pertinent part:

- (11) The Attorney General [now Secretary, Department of 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 such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record indicates that on February 22, 2003, the applicant was apprehended at the U.S.-Mexico border at San Ysidro, California, and charged with alien smuggling. She was driving a vehicle with her daughter, the aunt of her ex-husband, and the minor cousin of her ex-husband, who was found to be an imposter when he presented the border crossing card (BCC) of another child. The applicant's BCC was revoked at that time. On her Form I-601, the applicant claims that she was going to the United States to shop and to put gasoline in her car, and her ex-husband's aunt asked to accompany her. The aunt brought her son, who did not have a valid entry visa but instead presented someone else's BCC to the U.S. immigration inspector.

The record also indicates that during an interview at the U.S. Consulate in Ciudad Juarez, Mexico, on October 12, 2012, the applicant explained the facts noted above, claimed she was helping to bring the child to the United States as a favor, and admitted to knowingly contributing to the smuggling of an alien, because she knew the alien being smuggled was not the child on the BCC. The consular officer found that she was inadmissible under section 212(a)(6)(E) of the Act for alien smuggling. The applicant contests the finding of inadmissibility.

On appeal, counsel contends that the applicant did not knowingly engage in alien smuggling. Counsel states that the applicant admitted to the consular officer that she knew the act of smuggling an alien without papers is illegal, but she did not admit that she knew one of the passengers in her car would use a BCC belonging to another person to try to enter the United States. The applicant also asserts on her Form I-601 that at her immigrant visa interview at the U. S. Consulate in Ciudad Juarez, she did not admit that she knew that one of the passengers would use someone else's BCC.

Counsel contends that although the applicant was driving the car in which her ex-husband's cousin, who presented the fraudulent BCC, was a passenger, driving the vehicle in and of itself is not conclusive proof that the applicant knowingly assisted him to try to enter the United States unlawfully. Counsel cites *Tapucu v. Gonzalez*, 399 F.3d 736, 743 (6th Cir. 2005), in which the plaintiff-driver believed the alien-passenger was permitted to enter the country as a Canadian citizen but also had truthfully informed U.S. border officials that the passenger, who lived in Chicago, was an illegal alien. Moreover, in that case the alien allegedly being smuggled gave U.S. border officials accurate identification and citizenship papers and no false or doctored documents. In this particular case, however, according to the Director, the applicant "admitted to knowingly contributing to the

smuggling of an alien.” The applicant presents no evidence, other than her subsequent assertion on Form I-601 and counsel’s claim on appeal, to show that her statements before the U.S. consular officer were incorrect or misunderstood.

Pursuant to section 291 of the Act, the applicant bears the burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility “is of equal probative weight,” the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)). Although the applicant’s assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). Moreover, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, 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 record indicates that the applicant has failed to meet her burden to demonstrate that she is not inadmissible under section 212(a)(6)(E)(i) of the Act.

As noted above, a waiver under section 212(d)(11) of the Act is available only to individuals whose smuggling violations involved encouraging, inducing, assisting, abetting, or aiding a spouse, parent, son, or daughter to enter the United States unlawfully. In the present case, the applicant attempted to assist a child to try to enter the United States in violation of law by using a BCC belonging to another person. In that the person who tried to enter the United States illegally is not among the categories of relatives listed in section 212(d)(11) of the Act, the applicant is statutorily ineligible to apply for a waiver of her 212(a)(6)(E)(i) inadmissibility and is permanently barred from entering the United States.

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.