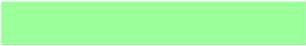


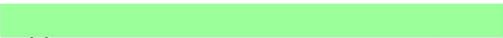


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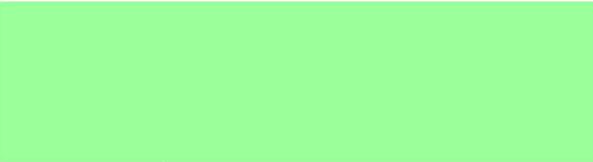


DATE: **MAR 18 2014** Office: NEBRASKA SERVICE CENTER 

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,

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 India 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 having knowingly assisted another alien to enter the United States in violation of law. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The Director concluded that the applicant failed to establish that he was eligible for a waiver under section 212(d)(11) of the Act, as the individual that he assisted to enter the United States in violation of law was not his spouse, parent, son or daughter at the time of the offense; and he denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Director*, dated September 13, 2013.

On appeal, counsel asserts that the U.S. consular officer violated chapter 15.3(b) of the Adjudicator's Field Manual (AFM) by forcing the applicant to admit to a wrongful accusation after threatening him and his family; and the Director abused his discretion when he denied the application without proper evidence to support the alien-smuggling allegation. *Brief in Support of Appeal*, filed October 15, 2013.

The record includes, but is not limited to, the applicant's Form I-290B, Notice of Appeal or Motion; statements of the applicant, his spouse, and their daughter; photographs; and the applicant's immigration records, including two sworn statements before U.S. consular officers in Mumbai, India, from 2010 and 2012. 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 in his October 20, 2010, sworn statement before a U.S. consular officer, the applicant claimed he was involved in an immigration scheme involving his wife, sister, and brother-in-law. He divorced his wife, [REDACTED], in 2003, around the same time that his sister, [REDACTED], divorced her U.S. citizen spouse, [REDACTED] in the United States. The applicant's wife then married his former brother-in-law on December 22, 2003, solely for immigration purposes. The applicant adds that his wife and former brother-in-law never had a husband-wife relationship; his sister and former brother-in-law have always lived together. The applicant's wife and daughter immigrated to the United States in 2005 as beneficiaries of immediate-family petitions filed by his

former brother-in-law, and the applicant notes that “it was pre-decided” that he would immigrate to the United States after his wife obtained U.S. citizenship, divorced the applicant’s former brother-in-law and re-married the applicant. He adds that he, his wife, his former brother-in-law and sister “knowingly and willfully” participated in this scheme to immigrate to the United States; he was in regular contact with his then-former wife after she moved to the United States; he knew their divorce and her subsequent marriage to his former brother-in-law were false; and he assisted her in obtaining an immigrant visa unlawfully. Evidence in the record shows that in 2011 in India, the applicant re-married his wife, who had become a U.S. citizen in 2008. She filed an I-130 Petition for Alien Relative on his behalf that was approved on July 14, 2011.

Counsel states that in October 2010, in relation to a fiancé visa application filed by the applicant’s then-former wife on his behalf, a U.S. consular officer in Mumbai accused the applicant of alien smuggling; the applicant tried to explain that this was not true but the officer did not believe him; the officer demanded that the applicant provide a written statement about his involvement; and the applicant initially refused but complied when the officer threatened to jail him and send his spouse and daughter back to India. Additionally, counsel asserts that the Director’s denial of Form I-601, based on the October 2010 sworn statement, was improper because he did not give the applicant a chance to rebut the smuggling accusation in response to a notice of intent to revoke or deny. Counsel additionally states that the applicant’s wife divorced his former brother-in-law due to physical and mental abuse.

Counsel also asserts that the U.S. consular officer violated chapter 15.3(b) of the AFM by exerting an “overbearing and abusive” attitude towards the applicant. The cited chapter addresses U.S. Citizenship and Immigration Services (USCIS) officer conduct and appearance and requires that interviews be conducted in a professional manner. Counsel, while acknowledging that U.S. consular officers, who are employees of the Department of State, are not USCIS adjudicators, offers no support for his assertion that consular officers must follow the AFM’s guidance.

The applicant states that the consular officer forced him to write his statement in October 2010 by threatening to have his spouse and daughter sent back to India and to imprison him. He adds that he was scared and knew none of what he wrote was accurate; he had no contact with his wife after their divorce until she returned to India for her mother’s funeral; and he also had no contact with his sister or former brother-in-law after he divorced his wife.

The Director’s denial refers to a February 9, 2012, statement by the applicant prepared at the U.S. consulate in Mumbai, in which the applicant states that his sister was living as [REDACTED] wife while [REDACTED] was married to the applicant’s wife. Counsel asserts that even if the statement is true, the applicant himself did not live with his sister or [REDACTED] and he was not in the United States; the statement only reflects the applicant’s assumption; and this living situation could have developed after his wife and his former brother-in-law, [REDACTED], had separated.

The claims made by counsel and the applicant do not outweigh the statements the applicant made under oath on October 20, 2010 and on February 9, 2012. The burden of proof is on the applicant to establish that he is not inadmissible to the United States. The record includes no evidence corroborating claims that the applicant experienced coercive and abusive treatment from a U.S.

consular officer. The applicant submits no evidence showing that, after making his statement, he submitted a complaint or otherwise documented having been forced to write a false and derogatory statement in 2010. Moreover, the applicant's October 20, 2010, sworn statement includes a claim that "All [of] the above statements are true and have been written by me out of my own free will and without any pressure whatsoever," typed before his signature and the date. The record therefore supports the Director's finding that the applicant assisted [REDACTED] at that time his former spouse, to enter the United States in violation of law and is therefore inadmissible under section 212(a)(6)(E) of the Act.

Counsel also states the Director improperly denied the applicant's Form I-601 on September 13, 2013, without first issuing a notice of intent to deny (NOID). Counsel cites to AFM chapter 10.3(f), which allows adjudicators to give applicants "an opportunity to inspect and rebut adverse evidence used in making a decision. Prior to denying an application or petition based on such evidence, USCIS routinely issues a NOID letter, explaining the nature of the adverse decision." The Director, however, is not required to issue a NOID; doing so is discretionary. A NOID is "required when derogatory information is uncovered during the course of the adjudication that is not known to the individual, according to 8 CFR 103.2(b)(16)." See USCIS Policy Memorandum, *Requests for Evidence and Notices of Intent to Deny*, PM-602-0085, dated June 3, 2013. As the applicant was aware of the derogatory information at issue here, a NOID was not required before the denial of his Form I-601.

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

(11) The Attorney General [now Secretary of Homeland Security] 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.

Section 212(d)(11) of the Act does not apply to the applicant, as the person he assisted in entering the United States was not his spouse, parent, son, or daughter at the time of the offense. He and his spouse were divorced and she had married his former brother-in-law when she entered the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.