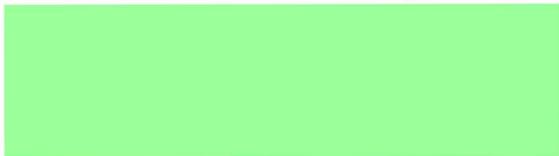


(b)(6)

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

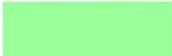


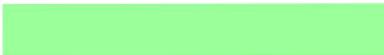
U.S. Citizenship
and Immigration
Services



Date: **NOV 25 2014**

Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Applicant: 

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:



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 record reflects that the applicant is a native and citizen of India who entered the United States without authorization in 1995 and did not depart the country until June 2011. The applicant 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. He contests the inadmissibility finding, but also seeks a waiver of inadmissibility¹ in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

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 knowingly engaged in alien smuggling and the alien was someone other than his spouse, parent, son or daughter, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Director*, April 2, 2014.

On appeal, counsel contends that the applicant did not knowingly assist in another alien's attempt to enter the country, that the evidence does not support a determination that he engaged in alien smuggling, and that USCIS erred in basing its waiver denial on the consular finding and failing to consider the extreme hardships that his qualifying relative will suffer as a result of the applicant's inadmissibility. In support of the appeal, counsel submits a brief. The record also includes: a brief in support of the Form I-601;² hardship and supportive statements; documentation of the applicant's interaction with immigration officials, removal order, and departure; financial evidence, including tax returns, W-2s, a bank statement, insurance information, and bills for household expenses; copies of immigration benefits applications, including a Form I-485 and related documents; country condition information; and photographs. The entire record was reviewed and considered in rendering this decision.

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.

....

¹ While denying having engaged in alien smuggling, the applicant admits being inadmissible for fraud and for being unlawfully present in the United States. See Application for Waiver of Grounds of Inadmissibility (Form I-601), September 24, 2013.

² We note that, although the waiver brief purports also to support a Form I-212 (Application for Permission to Reapply for Admission Into the United States After Deportation or Removal), immigration records do not indicate that the applicant has applied for consent to reapply.

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

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

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 in January 1995, U.S. immigration officials at the international airport in [REDACTED], Canada, cancelled the U.S. tourist visas of the applicant and a companion after interviewing them while conducting pre-boarding screening. The officials found that the applicant was involved in forging [REDACTED] frequent flier letters to assist others in obtaining non-immigrant visas at the [REDACTED] India. A pre-inspection search of his luggage revealed a letter indicating the applicant's involvement in this scheme. Prevented from returning to his employment in [REDACTED], the applicant remained in Canada until May 10, 1995, when he entered the United States without inspection near [REDACTED] Vermont. The record reflects that U.S. border officials issued the applicant an Order to Show Cause and Notice of Hearing, detained him initially, and then released him on bond.

On February 29, 1996, in proceedings before an Immigration Judge, the applicant withdrew his asylum application and was granted voluntary departure with an alternate order of deportation. He failed to depart timely, remaining here until returning to India on June 8, 2011. During processing of the applicant for an immigrant visa overseas, a consular officer determined him to be inadmissible under section 212(a)(6)(E)(i) of the Act.

On appeal, counsel asserts that the applicant did not knowingly engage in alien smuggling. He claims there is no evidence his client knew of the letter and, further, contests the conclusion that reference to the applicant by name in the letter indicates his involvement in the scheme described. Finally, counsel contends the applicant denied knowing of incriminating letters regarding the use of airline travel miles to support applications for nonimmigrant visas (NIVs), when asked about them during immigrant visa processing at the [REDACTED], India. We note that, after interviewing the applicant and investigating further, a consular officer refused the applicant's immigrant visa based on State Department evidence the applicant had engaged in alien smuggling. The applicant presents no evidence, other than subsequent assertions in support of his Form I-601 and counsel's claim on appeal, to show that his statements to the consular officer were incorrect or misunderstood.

The Director concluded the applicant's waiver request failed to overcome the 1995 finding that he was involved in forging frequent flier letters to aid associates in obtaining non-immigrant visas. The waiver denial notes that cancellation of the applicant's tourist visa stemmed from his involvement in alien smuggling and, further, that during processing of his immigrant visa in September 2012, the consular inadmissibility finding was based on his being linked to a known alien smuggler, as well as for assisting a non-relative obtain an NIV illegally. Besides the applicant's own statements and counsel's contentions, there is no evidence that the consular officer's findings were incorrect. Further, although counsel points to the *Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002 (MOU)*, September 29, 2003, as allowing USCIS to process the waiver appeal and determine admissibility, he fails to offer evidence that the consular findings were without factual basis. Pursuant to section 291 of the Act, the applicant bears the burden of demonstrating by a preponderance of the evidence that he 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)).

The record indicates that the applicant has failed to meet his burden to demonstrate that he is not inadmissible under section 212(a)(6)(E)(i) of the Act. He thus requires a waiver.

A waiver under section 212(d)(11) of the Act is available only to individuals whose smuggling violations involve encouraging, inducing, assisting, abetting, or aiding a spouse, parent, son, or daughter to enter the United States unlawfully. We note that the record shows that the person he helped was a nonrelative. The applicant is therefore statutorily ineligible to apply for a waiver of his 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.