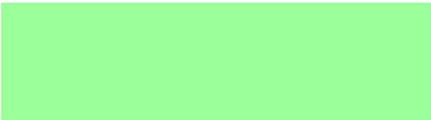




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 22 2014** Office: NEBRASKA SERVICE CENTER FILE:

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 Director, Nebraska 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 dismissed.

The applicant is a native and citizen of Liberia who was found to be inadmissible to the United States under 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 encouraged, induced, assisted, abetted, or aided someone to enter or to try to enter the United States in violation of the law. The applicant seeks a waiver of inadmissibility to reside in the United States with her U.S. citizen spouse and three children.

In his decision, dated September 17, 2013, the director determined that during the applicant's immigrant visa interview on March 2, 2009, the applicant claimed to have adopted her husband's sister, so that the sister could join her immigrant petition as her child.¹ The director states that after further questioning and review of the documents submitted, the consular officer determined that the adoption decree was fraudulent and the applicant was not the parent of the child in question. Because the child in question was not found to be the applicant's spouse, parent, son, or daughter, the applicant was found statutorily inadmissible to the United States without the ability to apply for a waiver. The director noted that the applicant's waiver application had not been signed and indicated that it could not be processed without her signature. The director denied the waiver application accordingly.

In addition to the decision issued by the Nebraska Service Center, the record includes a decision, dated June 25, 2010, from the Accra, Ghana Field Office. This decision states that the applicant was found inadmissible under section 212(a)(6)(E) of the Act because the adoption decree submitted by the applicant was found by the consular officer to be fraudulent and the applicant gave inconsistent testimony concerning the timeline of the adoption. The decision from the Accra Field Office, states that the applicant was complicit in deceiving the Liberian court as to the family status of herself, her husband, and the child in question.

On appeal, counsel asserts that the applicant's spouse qualifies for a waiver under section 212(d)(11) of the Act because the child in question was the applicant's adopted daughter at the time of her immigrant visa interview in accordance with an adoption decree from a Liberian court and that this child meets the definition of a child provided for in section 101(b)(1) of the Act. Counsel states further that faulty information in the adoption decree does not make the decree fraudulent and what is at issue should be whether the adoption decree is recognized in Liberian courts. In addition, counsel states that the applicant never attempted to smuggle anyone into the United States because she never attempted to physically enter the United States. Finally, counsel asserts that the applicant qualifies for a section 212(d)(11) waiver based on family unity.

The record contains: a letter from the biological parents of the applicant's spouse; the initial

¹ The record refers to the alleged adopted child as both the applicant's niece and the applicant's sister-in-law. However, the birth certificates for the applicant's spouse and the alleged adopted child show that they share the same parents. Thus, this person is the applicant's sister-in-law.

adoption decree issued by the Probate Court in [REDACTED] Liberia and dated June 20, 2006; a petition to the same court to nullify and cancel the decree of adoption; a court decree, dated July [REDACTED] cancelling the decree of adoption; a statement from the applicant's spouse; a statement from the applicant; an original copy of a notarized letter from the applicant's spouse's Liberian attorney who represented the family during the adoption process; and a letter from the U.S. Army stating that the applicant's spouse has been serving as a specialist since 2007.

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.

According to the Department of State's Foreign Affairs Manual, Chapter 9 Section 40.65 N4:

A key element of ... INA 212(a)(6)(E) provision is that the "smuggler" must act "knowingly" to encourage, induce, or assist an illegal alien to enter the United States. In other words, in order to be found inadmissible the "smuggler" must be aware of sufficient facts such that a reasonable person in the same circumstances might conclude that his or her encouragement, inducement, or assistance could result in the entry of the alien into the United States illegally and, further, the "smuggler" must act with intention of encouraging, inducing, or assisting the alien to achieve the illegal entry. Therefore, belief that the alien was entitled to enter legally, although mistaken, would be a defense to inadmissibility for a suspected "smuggler."

The record reflects that on March 2, 2009, the applicant appeared for an immigrant visa interview. The applicant's immigrant visa application, with an adoption decree submitted as part of the

supporting documentation, indicated that the applicant was the adoptive mother of her sister-in-law. Throughout the application process, the applicant and her spouse have maintained that this adoption decree was valid and recognized by Liberian courts.

During her immigrant visa interview, the applicant gave numerous inconsistent details in regards to when the adoption of her sister-in-law occurred. The director's decision states that the applicant initially stated that she and her husband adopted the child in question in 1996, which she then changed to a date of 2003. As stated above, the adoption decree was not issued until 2006 and the child in question stated that she did not live with the applicant until 2008. More importantly, the adoption decree itself includes erroneous information and omits information which brings into question the document's validity. The adoption decree names the applicant and her spouse as being married, when in fact they were married two years after the decree was issued. We recognize that the applicant's marital status is not relevant as to whether she could or could not adopt a child in Liberia as the U.S. Department of State, Bureau of Consular Affairs states that there is no marriage requirement for an inter-country adoption in Liberia, but the erroneous information, coupled with other omissions in the document can be considered in evaluating the overall validity of the document. We acknowledge the statements by the applicant's Liberian attorney during the adoption process and his admission that he mistakenly named the applicant as being married on the adoption decree. However, this mistake contributes to the questionable nature of the validity of the adoption decree and whether a Liberian court would have accepted a document representing unverified facts about the adoptive mother's identity. Standing alone, this mistake of marital status might not be enough to indicate that the adoption decree was fraudulent, but taken together with other concerns about the document as shown in the record, this mistake warrants consideration. The adoption decree is also of additional concern because it does not include: a registration number, volume number, page number, and/or date of registration, all potential indicators that the decree would have been recognized by Liberian courts and registered with the National Archives of Liberia.

Thus, the record indicates that the adoption decree submitted as part of the record is fraudulent and the applicant knowingly presented the decree in an attempt to assist her sister-in-law to enter the United States on an immigrant visa. Counsel concedes that the applicant was involved in obtaining the adoption decree, thus she knowingly participated in the process. In his letter, the applicant's spouse's attorney states that because the applicant's spouse was not in Liberia at the time, the applicant signed all necessary documentation on behalf of her spouse in regards to the adoption.

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). Here, the applicant has not met this burden. The record does not indicate that the adoption decree, presented to gain entry to the United States for the applicant's sister-in-law, was valid and/or the applicant reasonably believed it to be valid at the time it was presented.

In addition, contrary to counsel's assertion, the record does indicate that if the adoption decree was valid, the child in question would not have met the definition of a child under section 101(b)(1)(E) of the Act because, at the time of the immigrant visa interview, she had not resided with the applicant or his spouse for two years.

Finally, counsel's assertions that the applicant is not inadmissible under section 212(a)(6)(E) of the Act because she did not attempt to assist her sister-in-law to physically enter the United States are not persuasive. Courts have found inadmissibility under section 212(a)(6)(E) of the Act in cases where aid or assistance was given prior to entering or attempting to enter the United States. See *Ramos v. Holder*, 660 F.3d 200, 205 (4th Cir. 2011). In this case, the applicant made the affirmative acts of obtaining a fraudulent adoption decree and presenting it as part of her immigrant visa application. These acts were done to facilitate the granting of an immigrant visa to her sister-in-law in order to enter the United States in violation of the law.

Accordingly, we find that the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act as an alien who has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

A section 212(d)(11) of the Act waiver of inadmissibility is dependent upon a showing that the alien (1) only aided 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; and (2) the alien either, had been admitted to the United States as a lawful permanent resident alien and did not depart the United States under an order of removal, or, is seeking admission as an eligible immigrant.

In the present case, the record does not show that the individual the applicant attempted to smuggle is a qualifying relative for the purposes of section 212(d)(11) of the Act. Therefore, the applicant's inadmissibility under section 212(a)(6)(E) cannot be waived and the appeal will be dismissed.

ORDER: The appeal is dismissed.