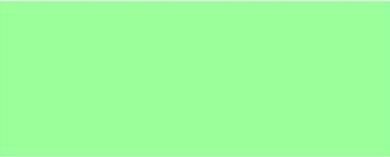




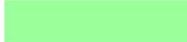
U.S. Citizenship
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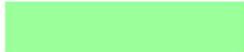
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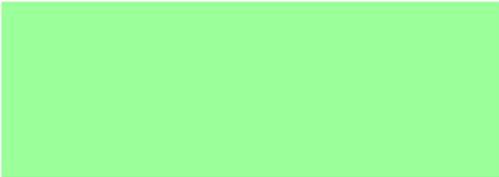
OFFICE: NEBRASKA SERVICE CENTER

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:

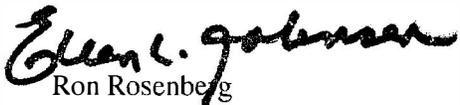


INSTRUCTIONS:

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 waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was found to be inadmissible to the United States for attempting to smuggle her sister into 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). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident husband.

The Director concluded that the applicant is not eligible for a waiver under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), and denied the application accordingly. *See Decision of the Director*, dated August 1, 2014.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible under section 212(a)(6)(E)(i) of the Act, as she believed that her sister was entitled to enter the United States legally when they attempted to enter together 2004. Counsel also asserts that the applicant did not perform an affirmative act of help, assistance, or encouragement for her sister, which is required under the statute. *Altamirano v. Gonzales*, 427 F.3d 586 (9th Cir. 2005). Counsel contends that no evidence has been provided to demonstrate that the applicant has engaged in alien smuggling and that she was not given adequate notice of the smuggling charge against her at the time of the incident.

In support of the waiver application and appeal, the applicant submitted a letter from the applicant, identity documents, a letter from her spouse and a Form DS-260, online immigrant visa and alien registration application, submitted by the applicant. The entire record was reviewed and considered in rendering this decision.

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

(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.

....

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

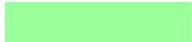
Section 212(d)(11) of the Act, provides:

- (11) 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 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 reflects that on September 17, 2004 the applicant applied at the [REDACTED] Texas port of entry for admission to the United States by presenting a Form DSP-150, laser visa. The applicant was travelling with her sister in a taxi, who also presented a Form DSP-150. The applicant's sister requested a Form I-94 for travel and was referred to secondary inspection. Upon interview, the applicant's sister presented pay stubs from a tortilla factory as proof of her employment. The applicant was also interviewed and told an immigration officer that her sister was employed by this company. However, when the pay stubs were determined to be fraudulent, the applicant's sister admitted that a friend made the documents for her and that she was not employed by the company. The applicant's visa was cancelled for aiding and abetting her sister in her attempt to illegally enter the United States.

Counsel for the applicant asserts that the applicant was not on notice that she was being charged with alien smuggling nor provided any documentation explaining why her visa was taken away. On September 17, 2004, the applicant signed a Form I-275, Withdrawal of Application for Admission/Consular Notification. The form outlines the basis for the applicant's laser visa cancellation, including the facts as stated above. The statement signed by the applicant affirms that she understands that her admissibility is questioned "for the above reasons" and that the reasons were translated into Spanish. Her application for admission was withdrawn and her visa cancelled. Counsel's assertion that the applicant was unaware of the reason for her visa cancellation is not supported by the record.

Counsel for the applicant asserts that, in accordance with the Ninth Circuit's decision in *Altamirano v. Gonzales*, 427 F.3d 586 (9th Cir. 2005), the applicant, in order to be inadmissible under section 212(a)(6)(E)(i), is required to perform an affirmative act of help, assistance or encouragement. Counsel further asserts that the Ninth Circuit, in *Santiago-Rodriguez v. Holder*, 657 F.3d 820 (9th Cir. 2011), determined that the government must prove the applicant's affirmative act of assistance by clear and convincing evidence. It is initially noted that the alien in *Santiago v. Rodriguez*, unlike the applicant, was in immigration removal proceedings rather than filing an affirmative application for relief. While it is the government's burden to prove that an alien is removable, it is the applicant's burden to demonstrate that she is not inadmissible to the United States. See Section 291 of the Act, 8 U.S.C. § 1361. Further, the applicant is



currently residing in Mexico, outside of the jurisdiction of the Ninth Circuit, and counsel has not submitted any cases from the Board of Immigration Appeals indicating that the applicant must provide an affirmative act of assistance to be inadmissible under section 212(a)(6)(E)(i). But, in any event, by falsely stating that her sister worked at the tortilla factory, the applicant made an affirmative act.

Counsel asserts that the applicant was not aware that her sister was entering the United States illegally and her mistaken belief constitutes a defense to a finding of inadmissibility under section 212(a)(6)(E)(i). The Department of State's Foreign Affairs Manual states that in order to be found inadmissible, a smuggler must be aware of sufficient facts so that a reasonable person in the same circumstances might conclude encouragement, inducement or assistance could result in the illegal entry of the alien and the smuggler must act with the intention of encouraging, inducing or assisting the alien to achieve the illegal entry. *See 9 FAM 40.65, N. 4.* Accordingly, belief that the alien was entitled to enter legally, though mistaken, would be a defense to inadmissibility. *Id.*

However, the record reflects that the applicant was untruthful with an immigration officer, stating that her sister was employed at a tortilla factory. The applicant's sister admitted that she was not employed by this company and submitted fraudulent pay stubs. The applicant assisted her sister in her attempted illegal entry through her untruthful statements to an immigration officer. As such, the applicant has not satisfied her burden of demonstrating that she was unaware that her sister was attempting to enter the United States unlawfully. Accordingly, the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act for knowingly encouraging, inducing, assisting, abetting, or aiding any other alien to enter or to try to enter the United States.

A section 212(d)(11) waiver of inadmissibility pursuant the Act 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, her sister, is a qualifying relative for purposes of a section 212(d)(11) of the Act waiver of inadmissibility.

The AAO, therefore, finds that the applicant's inadmissibility under section 212(a)(6)(E) cannot be waived. Accordingly, the applicant's appeal will be dismissed.

ORDER: The appeal is dismissed.