



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-M-D-

DATE: APR. 5, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Liberia, seeks a waiver of inadmissibility for alien smuggling. *See* Immigration and Nationality Act (the Act) § 212(d)(11), 8 U.S.C. § 1182(d)(11). A foreign national seeking to be admitted to the United States as an immigrant or to adjust to lawful permanent resident (LPR) status must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver to serve humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, if the individual smuggled was at that time a qualifying relative.

The USCIS Service Center Director, Nebraska Service Center, denied the application. The Director determined that the Applicant knowingly assisted an individual in trying to enter the United States by falsely claiming her as his daughter. The Director then concluded that the Applicant was inadmissible under section 212(a)(6)(E)(i) of the Act for alien smuggling.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that he was unaware that the child that he claimed as his daughter in his application was not his biological child.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for alien smuggling. 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.

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

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Section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), provides:

The Attorney General [now Secretary, Department 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 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.

The 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.

II. ANALYSIS

The only issue presented on appeal is whether the Applicant is inadmissible for alien smuggling. The Applicant claims that he believed that the child he included in his immigrant visa application as his daughter was his child.

On appeal, the Applicant submits an affidavit from himself and the child's biological mother, unpublished decisions, school records, medical records, and a photograph.

The evidence in the record establishes that the Applicant knowingly assisted an individual in trying to enter the United States by falsely claiming her as his daughter. The Applicant is not eligible for a discretionary waiver under section 212(d)(11) of the Act.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(E) of the Act for alien smuggling, specifically for knowingly assisting an individual in trying to enter the United States by falsely claiming her as his daughter.

The record establishes that at the Applicant's consulate interview on [REDACTED] 2013 in [REDACTED], Ghana, the consular officer informed the Applicant that paternity test results of the Applicant and the child, included in his application as his derivative daughter, revealed that the Applicant was not the child's biological father. Despite the paternity test results, the Applicant continued to assert that the child was his daughter. The consular officer noted that although the Applicant maintained that he was the child's father, the Applicant had not provided evidence that would establish that he had acted in a parental capacity for the child. An investigation revealed that the Applicant had not informed

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USCIS or the consulate of the child's existence until 2013, [REDACTED] years after her birth. The record also indicates that the Applicant told the consular officer that the child's biological mother died at the time of the child's delivery. The consular officer found that the child's DS-230, Application for Immigrant Visa and Alien Registration, did not list the child's mother as being deceased. The consular officer also noted that the child's birth certificate, provided by the Applicant, was registered in 2010, [REDACTED] years after the child's birth, by the child's biological mother, further contradicting the Applicant's claim about her death during childbirth.

On appeal, the Applicant asserts that he believed that he was the child's biological father until he was informed otherwise at the consular interview. He asserts that apart from the paternity test results, there is no evidence he actually knew that he was not the child's father. He submits a joint affidavit dated July 17, 2015, in which the Applicant and the child's biological mother assert that they were residing together when the child was conceived, the Applicant legitimized the child by performing customary rites, and he has supported and made all parental decisions for the child since her birth. The Applicant provides a photograph of himself and the child and evidence that he is named on the child's birth certificate, hospital records, and school records. The Applicant references an advisory opinion from the Library of Congress entitled "Children Born Out of Wedlock and Legitimation in Ghana" (June 3, 1994) (LOC 94-1737) which states that every child is legitimate in Ghana; no law has been enacted on the legitimation of children born out of wedlock in Ghana; and the existence of the father's name on the child's birth certificate reflects the father's acknowledgement and legitimation of the child.

As stated above, the record contains inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Applicant provides no explanation for the inconsistencies in the record. He does not explain his testimony that the child's mother died at delivery and the evidence of the birth certificate registered by the child's mother in 2010 and the affidavit signed by the mother in 2015. The 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. Based on the paternity test results and the inconsistencies in the Applicant's testimony about the death of the child's mother in childbirth and the evidence that she is alive, we concur with the consular officer's finding that the Applicant is inadmissible under section 212(a)(6)(E)(i) of the Act for knowingly assisting another individual to try to enter the United States in violation of law.

B. Discretion

While a discretionary waiver is available for a 212(a)(6)(E) inadmissibility under section 212(d)(11), it is only available if the individual assisted someone who was a spouse, parent, son or daughter. In this case, the Applicant has not established that the child he assisted in trying to enter the United States was his daughter and as such he is not eligible for a waiver.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of G-M-D-*, ID# 15597 (AAO Apr. 5, 2016)