



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

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

MATTER OF A-H-M-S-

DATE: AUG. 26, 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 Yemen, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) section 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 status to that of a lawful permanent resident (LPR) 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 Director, Nebraska Service Center, denied the application. The Director concluded that the Applicant is ineligible for a waiver of inadmissibility because he assisted in smuggling an individual other than his spouse, parent, son, or daughter.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence and states that he is not inadmissible under section 212(a)(6)(E) of the Act, as he did not knowingly try to assist his biological uncle to enter the United States in violation of the law, because his parents adopted his uncle when his uncle became an orphan; therefore his uncle is his adoptive brother. The additional evidence he submits includes, but is not limited to, sworn statements from the Applicant, his uncle, and his spouse; biographical information for the Applicant, his spouse, and their children; and documentation concerning hardship to the Applicant's spouse. The Applicant also submits documentation describing the deteriorating security situation in Yemen.

Upon *de novo* review, we will dismiss the appeal, because the Applicant did not establish that he is not inadmissible under section 212(a)(6)(E) of the Act or that he is eligible for a waiver under section 212(d)(11) of the Act.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for smuggling, more specifically, knowingly assisting his uncle to try to enter the United States unlawfully. Section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), states that any foreign national who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other foreign national to enter or

Matter of A-H-M-S-

to try to enter the United States in violation of law is inadmissible, with a waiver authorized under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11).

Section 212(d)(11) of the Act provides a discretionary waiver for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest in the case of an applicant seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) of the Act (other than paragraph (4) thereof), if the applicant has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the applicant's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

II. ANALYSIS

On appeal, the Applicant states that he is not inadmissible under section 212(a)(6)(E) of the Act, as he did not knowingly assist his biological uncle, who he considered his brother, to try to enter the United States unlawfully.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(E)(i) of the Act for smuggling, specifically knowingly assisting his biological uncle to try to enter the United States in violation of the law when both of them sought immigrant visas at the U.S. consulate in ██████ Yemen, in 2001, as children of the Applicant's father. The record reflects that the Applicant, who was then ██████ years old, stated to a consular official that his biological uncle was "his full sibling from the same biological mother and father." Genetic testing showed that the individual, whom the Applicant stated was his full sibling from the same biological mother and father, was not. As a result, the Applicant was found to be inadmissible under section 212(a)(6)(E) of the Act, for having knowingly assisted another foreign national to try to enter the United States unlawfully.

When a misrepresentation is made in regards to another's application for a visa, as is the issue here, for the misrepresentation to qualify as knowingly assisting another to try to enter the United States unlawfully under section 212(a)(6)(E)(i) of the Act, the misrepresentation must meet the willful and material standards applied in inadmissibility findings under section 212(a)(6)(C) of the Act.¹ The issue before us is whether the Applicant knowingly tried to assist his biological uncle to try to enter the United States unlawfully. To determine this we examine whether the Applicant's statement to the consular official in 2001 was willful and material.

¹ The Foreign Affairs Manual (FAM) at 9 FAM 302.9-7(B)(4) states that section 212(a)(6)(E) of the Act "relates to assisting aliens to enter the United States in violation of law, and therefore where the assistance relates to a misrepresentation in another alien's application for a visa or admission to the United States it would only be a violation of law if the misrepresentation meets the standards for a [section] 212(a)(6)(C) finding." Although we are not bound by the Foreign Affairs Manual, we find this analytical approach in this situation to be constructive.

For a misrepresentation to be willful, it must be determined that an applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we “closely scrutinize the factual basis” of a finding of inadmissibility for fraud or misrepresentation because such a finding “perpetually bars an alien from admission.” *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

In regard to willfulness, the Applicant states that he misunderstood the question and did not intend to falsely answer it. The Applicant acknowledges that he was asked specifically by the consular officer if he and his uncle were full siblings from the same biological mother and father. He states that he answered affirmatively to this question because he believed that that they were brothers and he knew they are biologically related. The Applicant states that he believed that he and his biological uncle were brothers because traditional adoption of his uncle by his parents occurred.

The record shows that the question asked of the Applicant was not whether the named individual was his brother or whether he was biologically related to him, but rather whether the individual was his full sibling by the same biological parents. The documentation in the record indicates that the Applicant knowingly stated that his uncle was his full sibling from the same biological parents. The Applicant does not claim that he did not understand what was meant by biological mother and father or that this was not the question asked of him. As result, we find that the Applicant’s affirmative answer to that question was a willful misrepresentation.

The next question before us is whether the Applicant’s misrepresentation to the consular official was material. “[T]he test of whether concealments or misrepresentations are “material” is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, *i.e.*, to have had a natural tendency to affect, the Immigration and Naturalization Service’s decisions.” *Kungys v. United States*, 485 U.S. 759, 760 (1988). A misrepresentation is material if either the foreign national is excludable on the true facts, or the misrepresentation tends to shut off a line of inquiry which is relevant to the foreign national’s eligibility and which might well have resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The record indicates that the Applicant and his biological uncle were seeking immigrant visas as the sons of a U.S. citizen, the Applicant’s father. To be eligible for that visa, the Applicant’s biological uncle had to meet the definition of “child,” at section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). If the Applicant’s biological uncle did not meet the definition of child at the time of the immigrant visa interview, but the Applicant misrepresented the facts to show that he did, then his misrepresentation was material. If the Applicant’s biological uncle was eligible for the immigrant visa as an adopted child, he would have had to meet the requirements in the Act for adopted children. *See* sections

101(b)(1)(E)-(G) of the Act. The Applicant's biological uncle's relationship to the Applicant's father was therefore material to his eligibility for the visa.

In regard to the Applicant's biological uncle's eligibility for a visa as the child of the Applicant's father, the Applicant states that he believed that his uncle was eligible because his father had adopted his uncle in the traditional sense. The Applicant states that Yemen does not have formal adoption procedures, his parents raised his uncle before both boys reached the age of 16, and that for "all intents and purposes" they are adoptive brothers. He asks that statements of family members in the record be considered as evidence of "traditional" adoption, as no legal documents are available, citing 8 C.F.R. § 204.2(d)(2)(vii)(A).² The Applicant further states that the U.S. Department of State is aware that legal adoption is not permitted in Islamic countries. He cites *Matter of Ye*, 12 I&N Dec. 747 (BIA 1968) and *Matter of Repuyan*, 19 I&N Dec. 199 (BIA 1984), as authority supporting the position that "traditional" adoption is "in compliance" with the law when legal adoption is nonexistent. The record, however, does not indicate that the Applicant's biological uncle presented himself as the adopted son of the Applicant's father, to permit a relevant inquiry into whether the Applicant's biological uncle's relationship to the Applicant's father fit under one of the subsections under section 101(b)(1) of the Act relating to adopted children. The Applicant's answer shut off a line of inquiry into the nature of the relationship between the Applicant's biological uncle and the Applicant's father.

Further, in countries such as Yemen, where legal adoption is not permitted, specific procedures must be followed to prove that the relationship between the individuals in question meets the appropriate legal standards. The U.S. Department of State website confirms that "Yemeni law, which follows Shari'a law, does not permit the adoption of Yemeni children in Yemen." *Yemen, Intercountry Adoption, Country Information, Learn About a Country*, U.S. Department of State, <https://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/yemen.html> (last visited Aug. 16, 2016). Further, the U.S. Department of State generally indicates that in countries that do not permit adoption, guardianship or custody may be a basis for obtaining an immigrant visa, but specific legal and documentary requirements must be met, including "showing that the underlying Shari'a law or the Islamic courts in the country in question actually allows for the child to be adopted overseas." *FAQ: Adoption of Children from Countries in which Islamic Shari'a Law is Observed*, U.S. Department of State, <https://travel.state.gov/content/adoptionsabroad/en/adoption-process/faqs/islamic-sharia%20law.html> (last visited Aug. 17, 2016). The Applicant cites 8 C.F.R. § 204.2(d)(2)(vii)(A), which also states that documentation from the appropriate legal entity is required to show custody over the child. The evidence does not show those procedures were followed in this case. As a result, the Applicant's misrepresentation that his biological uncle was his full sibling from the same

² 8 C.F.R. § 204.2(d)(2)(vii)(A) states the evidentiary requirements for meeting the burden to prove the adoptive parent's relationship with their son or daughter, and includes showing legal custody over the child in accordance with the laws of the state and "under the approval of a court of law or other appropriate entity." The regulations also specifically states that a sworn affidavit signed before a notary public is insufficient to prove legal custody.

biological parents was material, in that he was not eligible for a visa if he was not his biological sibling.

The Act states that an individual is inadmissible if they “at any time knowingly ha[ve] encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.” By stating that his biological uncle was his biological brother, the Applicant assisted his biological uncle to try to enter the United States in violation of the law. As a result, he is inadmissible under section 212(a)(6)(E) of the Act.

B. Statutory Eligibility

A waiver of inadmissibility under section 212(d)(11) of the Act is dependent upon a showing that an applicant (1) only aided an individual who, at the time of the offense, was the applicant’s spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law; and (2) the applicant 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.

The record indicates that the Applicant assisted a foreign national other than his spouse, parent, son, or daughter to try to enter the United States in violation of law. As a result, the Applicant is not statutorily eligible to obtain a waiver of inadmissibility under section 212(d)(11) of the Act.

We find that the Applicant’s inadmissibility under section 212(a)(6)(E) cannot be waived. As the Applicant does not qualify for a waiver under section 212(d)(11) of the Act, we need not consider whether the Applicant merits a waiver in the exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden, as he has not established that he is not inadmissible under section 212(a)(6)(E) of the Act, or that he is eligible for a waiver under section 212(d)(11) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of A-H-M-S-*, ID# 12278 (AAO Aug. 26, 2016)