



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

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

MATTER OF N-S-

DATE: FEB. 11, 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 India, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(d)(11), 8 U.S.C. § 1182(d)(11). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

In a decision dated May 4, 2015, the Director noted that the Applicant was found inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act, 8 U.S.C. §1182(a)(6)(E)(i), for knowingly engaging in alien smuggling. Specifically, the Director detailed that the Applicant had falsely claimed an individual as his child during his immigrant visa interview. The Director concluded that the Applicant was statutorily ineligible for a waiver pursuant to section 212(d)(11) of the Act because the subject of his conduct was not a spouse, parent, son or daughter. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, the Applicant asserts that he did not intend to misrepresent the subject of his conduct as his child, as she had lived with him since her birth, and he had verbally adopted her as his own daughter. In support, he submits a written statement. The record was reviewed and considered in its entirety 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.

...

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

The record reflects that the Applicant appeared for his immigrant visa interview with his wife and three individuals whom he claimed were his children. After questioning, the visa officer requested

DNA testing to confirm the family relationship between the Applicant and one of the claimed children. In response to this request, the Applicant disclosed that the individual in question was not his actual child, but had lived with the Applicant and his family since her birth. He claimed that, although he had verbally adopted her, he never filed any documents to make the adoption official. The Applicant concedes that he lacks documentation, such as an “Adoption Deed,” court order, or other evidence establishing that the child was adopted in conformity with the Hindu Adoption and Maintenance Act of 1956 or the Juvenile Justice Act of 2000. As such, when the Applicant claimed that the individual in question was his child during his visa interview, he knowingly engaged in alien smuggling. Accordingly, the Applicant is inadmissible under section 212(a)(6)(E)(i) of the Act and requires a waiver under section 212(d)(11) of the Act.

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

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) thereof¹), 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.

We note that the Applicant seeks admission as the brother of a U.S. citizen, a fourth preference visa classification. The Applicant is statutorily ineligible for consideration for a waiver under section 212(d)(11) of the Act. Moreover, even if we were to find that the Applicant was eligible for a waiver of inadmissibility under section 212(d)(11) of the Act, which is not the case here, the subject of the Applicant’s conduct is not his “spouse, parent, son, or daughter,” and thus no waiver under section 212(d)(11) of the Act is available to him.

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.

¹ Section 203(a) provides:

(4) Brothers and sisters of citizens

Qualified immigrations who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).

Matter of N-S-

ORDER: The appeal is dismissed.

Cite as *Matter of N-S-*, ID# 15539 (AAO Feb. 11, 2016)