



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

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

In Re: 19892529

Date: MAR. 15, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(d)(11), 8 U.S.C. § 1182(d)(11), for alien smuggling under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E).

Any noncitizen who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other noncitizen to enter or to try to enter the United States in violation of law is inadmissible. Section 212(a)(6)(E)(i) of the Act. Section 212(a)(6)(E)(iii) of the Act provides for a discretionary waiver of the alien smuggling ground of inadmissibility for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, but only if the individual whom the alien encouraged, induced, assisted, abetted, or aided in entering or trying to enter the United States in violation of law was the applicant's spouse, parent, son, or daughter (and no other individual) at the time of the offense. Section 212(d)(11) of the Act.

Because the Applicant is residing abroad and applying for an immigrant visa, the U.S. Department of State (DOS) makes the final determination concerning admissibility and eligibility for a visa. Here, a consular officer determined the Applicant knowingly assisted, abetted, or aided individuals to enter, or try to enter, the United States in violation of law. The consular officer therefore found that the Applicant was inadmissible to the United States under section 212(a)(6)(E)(i) of the Act, for alien smuggling. The Director of the Nebraska Service Center denied the waiver, noting the consular officer's inadmissibility finding for smuggling and concluding that the Applicant was statutorily ineligible for a waiver because the individual he aided in smuggling was not his spouse, parent, son, or daughter.

On appeal, the Applicant states that the Director's decision was inconsistent with the regulations and should be reconsidered, contending that he qualifies for an inadmissibility waiver. The Applicant acknowledges that he was found inadmissible by a consular officer for alien smuggling but asserts that the individual he assisted was his spouse whom he "married in good faith." The Applicant contends that he is therefore eligible for a waiver under section 212(d)(11) of the Act.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

As stated above, because the Applicant is residing abroad and applying for an immigrant visa, the DOS makes the final determination concerning admissibility. In 2019, a consular officer determined that the Applicant engaged in marriage fraud, knowingly assisting a noncitizen to enter the United States in violation of law and determined this individual was not his spouse, parent, son, or daughter at the time. The DOS further concluded that the Applicant was not eligible for a waiver because his claimed marriage to the noncitizen he assisted in smuggling was not a *bona fide* relationship. The Applicant submitted documentation indicating that he was notified of this finding by the DOS and he acknowledges this inadmissibility determination on appeal.

The Applicant is therefore statutorily ineligible for a waiver of inadmissibility for alien smuggling.

**ORDER:** The appeal is dismissed.