U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25426407

Date: MAR. 14, 2023

Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant is seeking admission as an immediate relative and seeks a waiver of inadmissibility under section 212(d)(11) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(d)(11).

The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), finding the Applicant inadmissible for alien smuggling, pursuant to section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), and ineligible for a discretionary waiver. The matter is now before us on appeal.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's*, Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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. 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, a discretionary waiver is available 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) (other than paragraph (4) thereof). Section 212(d)(11) of the Act. A noncitizen seeking admission must establish admissibility "clearly and beyond doubt." Sections 235(b)(2)(A) and 240(c)(2)(A) of the Act.

II. ANALYSIS

The Applicant is a citizen of Uganda. Her spouse, a U.S. citizen, filed Form I-130, Petition for Alien Relative, on her behalf in 2008. The petition was denied as abandoned after the Applicant's spouse did not respond to a request for evidence. In 2012, the Applicant applied for a visitor's visa to the

United States with the U.S. Department of State (DOS). The DOS found the Applicant inadmissible under 212(a)(6)(E)(i) of the Act and denied the visa request. The Applicant's spouse filed another I-130 petition, which was approved in December 2015. Because the Applicant is residing abroad and applying for an immigrant visa, the DOS makes the final determination concerning eligibility for a visa. Thus, as a result of the Consular Officer's finding of inadmissibility under 212(a)(6)(E)(i) of the Act, the Applicant requires a waiver under section 212(d)(11) of the Act.

In May 2021, the Applicant filed her waiver application. On the form she stated:

> My husband . . . adopted a daughter. We received incorrect advice that we could file a Consular Report of Birth Abroad [(CRBA)] for our daughter. Although my husband had filed it, we both needed to sign the form, and it contained incorrect statements.

Filed with the waiver application were emails to and from the Applicant's attorney and the U.S. Embassy in Nairobi. According to the emails, a DOS Consular Officer determined that the Applicant misrepresented herself by attempting to obtain a U.S. passport and CRBA for a non-biological child. Also included with the waiver application was an affidavit by the Applicant's spouse, who testified as follows: He met the Applicant in 2000 and they married in 2012. In 2012, they adopted a child in Uganda, who was approximately seven years old at the time. They filed a CRBA and was told by the consulate that they had to submit DNA evidence, so they told the consular official that the child was adopted. In September 2020, the child disappeared and they do not know if she ran away or was captured or killed by criminals or insurgents. The Director denied the waiver application because the Applicant was ineligible for a waiver of section 212(a)(6)(E)(i) of the Act as she had not established the child was her biological or adopted daughter or son as section 212(d)(11) of the Act requires.[1]

The Applicant asserts on appeal that she was unaware that her "adopted child" qualified for an immigration benefit and her actions do not amount to fraud, much less smuggling. The record does not support the Applicant's assertions. Based on the record, the Applicant knowingly encouraged, induced, assisted, abetted, or aided in the process of obtaining a CRBA and passport for a child that she knew was not her biological child. She acknowledged attesting to the child being hers biologically in processing the CRBA. Her spouse acknowledged that they did not pursue filing for a passport when asked to submit DNA evidence and only then told a DOS Consular Officer that the child was not theirs. It is the Applicant's burden to establish her admissibility clearly and beyond doubt and she has not done so here.

The Applicant also asserts the Director should have issued a request for evidence (RFE) prior to denying the waiver application and given her an opportunity to provide a certificate of adoption. It is within an adjudicating officer's discretion whether to issue an RFE. See 8 C.F.R. § 103.2(b)(8)(iii) (stating that if the evidence does not establish eligibility, USCIS may deny an application, may request more information, or may issue a notice of intent to deny (NOID)). Furthermore, if there is no legal

[1] We note that the Applicant submitted to U.S. Citizenship and Immigration Services (USCIS) with her waiver application a birth certificate indicating her date of birth as [redacted] 1977, and with her 2015 I-130 petition a passport evidencing her date of birth as [redacted], 1980. The 2015 filed I-130 petition included a marriage certificate evidencing the Applicant married her spouse in 2012, while the 2008 I-130 petition included a marriage certificate evidencing they married in 2005. To the extent the Applicant intends to pursue admission to the United States, she will also need to address these inconsistencies in the record.

basis for approval, and additional evidence would not establish a legal basis for approval, USCIS guidance is to issue a denial without an RFE or NOID. See generally 1 USCIS Policy Manual E.9(B)(1), https://www.uscis.gov/policymanual (explaining, as guidance, when to issue an RFE or NOID in the adjudications process); 1 USCIS Policy Manual, at E.6(F)(3) (explaining, as guidance, when the evidence in the record does not establish eligibility for the benefit sought, an RFE or NOID should be issued unless the officer determines that there is no legal basis for the benefit request and no possibility that additional information or explanation will establish a legal basis for approval.) Here, the record evidenced that the child was not biologically the Applicant's son or daughter. Further the Applicant did not provide proof of adoption for the child or indicate that an adoption certificate was available to either the DOS, or to USCIS when she filed her waiver application. She mentions the possibility of providing a certificate of adoption for the first time on appeal but does not provide it with her submission on appeal.

Moreover, the familial relationship to the individual the Applicant "encouraged, induced, assisted, abetted, or aided" in smuggling had to have been in existence "at the time of the offense." Section 212(d)(11) of the Act. Section 101(b)(1)(E)(i) of the Act defines a child, in relevant part, as an "unmarried person under twenty-one years of age who is . . . a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years . . . ." The Applicant's spouse claimed they adopted the child in 2012, which was the same year they attempted to file for a U.S. passport for her. The Applicant was unable to establish the child was adopted to the DOS during her 2012 interview. Based on these details, even if the child were formally adopted in 2012, the child at the time of the offense would not have resided with the Applicant for two years to meet the definition of a child under the Act. The Director therefore did not err in denying the case without issuing an RFE as there was no legal basis for a waiver pursuant to section 212(d)(11) of the Act.

III. CONCLUSION

The Applicant is inadmissible pursuant to section 212(a)(6)(E)(i) of the Act and has not established her eligibility for a waiver pursuant to section 212(d)(11) of the Act.

ORDER: The appeal is dismissed.