



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

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

In Re: 29137196

Date: DEC. 12, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant has applied for an immigrant visa and has been found inadmissible for fraud or willful misrepresentation and alien smuggling. She seeks waivers of these grounds of inadmissibility. *See* section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i); section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11). The Director of the Nebraska Service Center (Director) denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant is not among the classes of individuals eligible to seek a waiver of inadmissibility for alien smuggling and is therefore statutorily ineligible for a waiver of this ground of inadmissibility.

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, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act. There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act.

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. A discretionary waiver of the alien smuggling ground of inadmissibility is available 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.

## II. ANALYSIS

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 her granddaughter to enter the United States in violation of law. Therefore, the consular officer 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 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 she aided in smuggling was not her spouse, parent, son, or daughter.

On appeal, the Applicant contends that she never misrepresented a material fact or engaged in alien smuggling. She maintains that her granddaughter had a valid tourist visa to travel to the United States with her and her spouse in 2006. She argues that she never had any intention of keeping her granddaughter in the United States indefinitely. However, her granddaughter became ill and required hospitalization. She states that she only enrolled her granddaughter in a special education program after people told her that it was illegal to keep her out of school. The Applicant acknowledges that she was found inadmissible by a consular officer for alien smuggling, but asserts that her granddaughter's condition would have worsened if she did not attend school. She asks for forgiveness for her actions based on humanitarian factors.

We acknowledge the Applicant's contentions on appeal. However, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. As stated above, because she is residing abroad and applying for an immigrant visa, the DOS makes the final determination concerning admissibility. In December 2015, a consular officer determined that the Applicant engaged in fraud or willful misrepresentation, and knowingly assisted a noncitizen, her granddaughter, to enter the United States in violation of law. The Applicant submitted documentation indicating that she was notified of this finding by the DOS and she acknowledges this inadmissibility determination on appeal. The Applicant was found inadmissible for assisting her granddaughter to enter the United States in violation of law, and because the individual she assisted was not her spouse, son or daughter, she is statutorily ineligible for a waiver of inadmissibility under section 212(d)(11) of the Act.

**ORDER:** The appeal is dismissed.