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U.S. Department of Homeland Security  
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**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

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[Redacted area]

FILE:

[Redacted]

Office: LOS ANGELES DISTRICT OFFICE

Date: FEB 18 2005

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(d)(11) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(d)(11)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal dismissed as moot.

The record reflects that the applicant is a native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(E)(i). He seeks a waiver of inadmissibility to remain in the United States with his U.S. citizen wife and three U.S. citizen children and adjust his status to that of a lawful permanent resident pursuant to INA § 245, 8 U.S.C. § 1255, as the beneficiary of an immediate relative petition filed on his behalf by his wife.

Section 212(a)(6)(E) of the Act provides:

(6) Illegal entrants and immigration violators.—

(E) Smugglers.—

(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.

(ii) Special rule in the case of family reunification.—Clause (i) shall not apply in the case of an alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) . . . if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

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

8 U.S.C. § 1182(a)(6)(E). Section 212(d)(11) provides, in pertinent part:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive the 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) thereof), if the alien has encouraged, induced, assisted, abetted, or aided *only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual)* to enter the United States in violation of law.

8 U.S.C. § 1182(d)(11).

The district director based the finding of inadmissibility on the applicant's 1988 conviction by guilty plea for transportation of illegal aliens in violation of former INA § 274(a)(1)(B), 8 U.S.C. § 1324(a)(1)(B). Counsel contends, "[a]t the time of his conviction, his conduct had no adverse immigration consequences and primary considerations of justice require that such consequences not be imposed upon him retroactively in this context." *Brief in Support of Appeal* (January 22, 2004), at 1. Counsel then recites deportation grounds for alien smugglers as they appeared in former INA § 241(a)(13) prior to 1990. Because the present case is not one of deportation, but rather of admission as a lawful permanent resident, the applicable provisions at issue in the case are contained in section 212 of the INA, which lists grounds of aliens inadmissible to the United States (or, as the language read in 1988, grounds for finding an alien "excluded from admission").<sup>1</sup> In 1988, section 212(a)(31) provided that any alien in the following class was inadmissible:

(31) Any alien who at any time shall have, knowingly and *for gain*, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law;

INA § 212(a)(31) (as amended as of 1988) (emphasis added). No waiver of this ground of inadmissibility was available. Counsel contends that the law of inadmissibility applies to the present case as it existed at the time the applicant was convicted and, because there is no indication that the applicant was involved in smuggling "for gain," the applicant is not inadmissible. Counsel contends that applying the amendments to this section as it reads today to the applicant would be an impermissible retroactive impact on his 1988 conduct, citing U.S. Supreme Court decisions in *INS v. St. Cyr*, 553 U.S. 289 (2001) and *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

As counsel has noted, prior to the 1990 and 1991 amendments to the INA, the applicant's conviction would not have resulted in inadmissibility unless he engaged in alien smuggling "for gain." As the INA currently reads, an alien who was involved in alien smuggling would be inadmissible because there is no exception to inadmissibility simply because the alien smuggling was not for gain. The question raised by counsel is whether the changes to the INA after the applicant's conviction result in the applicant's inadmissibility; in other words, whether the subsequent amendments to this part of the INA apply retroactively. Because we find that the applicant is not inadmissible under INA § 212(a)(6)(E), we do not reach this question.

Both the current and prior incarnation of the inadmissibility ground in this case specify that to be inadmissible, the alien in question must have encouraged, induced, assisted, abetted or aided another alien *to enter* the United States. The applicant in this case was convicted of knowingly transporting illegal aliens *within* the United States. There was no allegation or admission that the applicant encouraged, induced, assisted, abetted or aided anyone *to enter* the United States. Therefore, his criminal conviction under INA § 274(a)(1)(B) (now codified as 274(a)(1)(A)(ii)) does not render him inadmissible under INA § 212(a)(6)(E).

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<sup>1</sup> For purposes of this discussion, the former sections 241 and 212 of the INA contained essentially parallel language as grounds for deportability and for exclusion.

We also note that the applicant's criminal offense is not a crime involving moral turpitude. *See Matter of Tiwari*, 19 I&N Dec. 875 (BIA 1989). Therefore, the applicant is not inadmissible under INA § 212(a)(2)(A)(i)(II).

On the record before us, for the reasons stated above, the applicant does not appear to be inadmissible. This order is without prejudice to future determinations of inadmissibility based on other grounds or evidence not raised in this appeal.

**ORDER:** The decision of the district director is withdrawn, and the appeal is dismissed as moot.