U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: Nebraska Service Center Date: MAY - 9 2001

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

Public Copy

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

IN BEHALF OF APPLICANT: [redacted]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was unlawfully present in the United States on September 21, 1986. He was apprehended as the driver of a vehicle transporting 7 undocumented aliens. In a statement under oath the applicant indicated that he traveled to Mexico, met the group of aliens, and indicated that he would charge them $200 each for the trip to Denver with payment due after they found work. On November 3, 1986, the applicant was convicted of the offense of one count of Aiding and Abetting an Alien to Enter the United States Illegally under 8 U.S.C. 1325, as provided in 18 U.S.C. 2, and he was sentenced to 179 days in jail. Therefore he is inadmissible under § 212(a)(6)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(E). The applicant states that he was deported to Mexico in March 1987. Therefore, he is inadmissible under § 212(a)(9)(A)(ii) of the Act, 8 U.S.C. 1182(a)(9)(A)(ii).

Although the applicant's original Service file, A28 340 600, is not present for review, he states that he reentered the United States in 1991 when they were not inspecting anyone at the border. Therefore, the applicant reentered without permission to reapply for admission in violation of § 276 of the Act, 8 U.S.C. 1326 (a felony). The applicant married his second wife, a naturalized U.S. citizen, in November 1995 and seeks permission to reapply for admission under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to remain in the United States with his family.

Citing Matter of J-F-D-, 10 I&N Dec. 694 (Reg. Comm. 1963), and Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), the director determined that the applicant is mandatorily inadmissible to the United States under § 212(a)(6)(E) of the Act, 8 U.S.C. 1182(a)(6)(E), for having been convicted of aiding and abetting an alien to enter the United States illegally, and no waiver is available for such a violation. The director then denied the application accordingly.

On appeal, counsel states that 8 U.S.C. 1325 does not deal with aiding and abetting aliens to enter the United States illegally, but rather, it deals with misrepresentation and false entry. On appeal counsel requests 120 days from November 17, 2000, in which to submit a written brief.

More than 120 days have elapsed since counsel requested the additional time, and no further evidence has been entered into the record. Therefore, a decision will be rendered based on the present record.

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

> (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 the law is inadmissible.
>
> (ii) Special Rule In The Case Of Family Reunification.- Clause (i) shall not apply in the case of alien who is an eligible immigrant...was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under § 203(a)(2) (including under § 112 of the Immigration Act of 1990) or benefits under § 301(a) of the Immigration Act of 1990 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.

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

> The Attorney General 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 any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under § 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under § 203(a) (other than paragraph (4) thereof), if the alien 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.

Although 8 U.S.C. 1325, in part, deals with unlawful entry, the full offense that the applicant was convicted of reads; 8 U.S.C. 1325, as provided in 18 U.S.C. 2. 18 U.S.C. 2. Title 18 U.S.C. 2 relates to conspiring, aiding or willfully causing a criminal act to be done. See Matter of Short, 20 I&N Dec. 136 (BIA 1989). Therefore, the applicant's conviction goes beyond mere unlawful entry.

Further, a conviction is not necessary to a finding of deportability under present § 237(a)(1)(E) of the Act, 8 U.S.C. 1227(a)(1)(E), when the alien's own testimony and affidavit regarding his role in bringing aliens into the United States constitutes sufficient evidence of deportability. The present record contains sufficient evidence to establish that the applicant aided and abetted the illegal entry of aliens into the United States. See Matter of Estrada, 17 I&N Dec. 187 (BIA 1979).

Matter of Martinez-Torres, supra, held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien convicted of violating a law which renders him mandatorily inadmissible to the United States, and no purpose would be served in granting the application.

The record reflects that the applicant is inadmissible to the United States under section 212(a)(6)(E) of the Act, for having aided and abetted aliens to enter the United States in violation of law. Since the aliens were other than the applicant's spouse, parent, son, or daughter, no waiver is available for such ground of inadmissibility. Therefore, the favorable exercise of discretion in this matter is not warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.