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

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



FILE [Redacted] Office: San Antonio

Date: **APR 21 2003**

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiegmann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Antonio, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was unlawfully present in the United States without a lawful admission or parole as early as November 1, 1997. According to the arrest report, he was arrested on December 1, 1999, while transporting one undocumented alien. On December 2, 1999, the applicant was convicted of unlawfully entering the United States in violation of 8 U.S.C. § 1325. He was placed on probation for five years. On December 2, 1999, he was served with a Notice to Appear. On January 27, 2000, he was ordered removed by an immigration judge. He was removed to Mexico on that same date. Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant seeks permission to reapply for admission after removal under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1181(a)(9)(A)(iii).

The district director concluded that the applicant was inadmissible under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for having been engaged in alien smuggling.

Citing *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), the district director noted that the above applicant is mandatorily inadmissible to the United States under section 212(a)(6)(E)(i) of the Act, for having committed a violation for which no waiver is available. The director concluded that no purpose would be served in granting the above application and denied the application accordingly.

On appeal, the applicant requests that he be forgiven and states that a written brief will follow. More than 30 days have elapsed since the appeal was filed on December 20, 2001, and no additional documentation has been received into the record. Therefore, a decision will be entered based on the present record.

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

(i) 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 section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 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 section 211(b) and 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.

According to the arrest report, the applicant was driving an automobile on U.S. Highway 20 when he was stopped. It was determined that both the driver and the passenger were unlawfully present in the United States. It was determined that the passenger was the driver's co-worker doing odd jobs in and around [REDACTED]

The Board held in *Matter of Estrada*, 17 I&N Dec. 187 (BIA 1979), that a conviction is not necessary to a finding of deportability under former section 241(a)(13), 8 U.S.C. § 1251(a)(13), presently codified as section 237(a)(1)(E) of the Act, 8 U.S.C. § 1227(a)(1)(E).

In *Matter of I-M-*, 7 I&N Dec. 389 (BIA 1957), it was held that transporting an alien within the United States who was in the United States in violation of law does not constitute a violation of former section 241(a)(13) of the Act, if the person transporting the alien did not know the alien until after entry.

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 clearly reflects that the applicant knew the alien he was transporting as they had been co-workers for at least two years. Therefore, the record supports the district director's conclusion that the applicant was engaging in alien smuggling and is inadmissible under section 212(a)(6)(E)(i) of the Act, for having aided and abetted an alien to enter the United States in violation of the law. Since the alien was 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.