



U.S. Department of Justice
Immigration and Naturalization Service

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

[REDACTED]

FILE [REDACTED] Office: San Antonio

Date: **JAN 24 2005**

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)

IN BEHALF OF APPLICANT:
[REDACTED]

PUBLIC COPY

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 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Antonio, Texas, 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 arrested on June 27, 1983, for knowingly recruiting and aiding and abetting the illegal entry of aliens into the United States for gain. The applicant was determined to be inadmissible under former section 212(a)(31) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(31), now codified as section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E). On June 29, 1983, the applicant was convicted of a violation of 8 U.S.C. § 1325 and was sentenced to 179 days in jail. On December 16, 1983, he was deported from the United States.

Shortly thereafter, the applicant was again present in the United States without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). The record indicates that he married a U.S. citizen, Celia Roberta Stout, on March 30, 1984, in the United States.

The record reflects that the applicant applied for admission into the United States on November 5, 1986, as a lawful resident alien, based on an immigrant visa issued at the U.S. Consulate on July 8, 1986. The applicant was found to be excludable under former sections 212(a)(31) and 212(a)(17) of the Act, presently codified as section 212(a)(9)(A)(ii), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been previously deported from the United States. 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).

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 district director noted that the above applicant is mandatorily inadmissible to the United States under section 212(a)(6)(E) of the Act, for having been convicted of 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, counsel states that the Service failed to give the applicant the opportunity to show that he is admissible. Counsel asserts that the applicant has outstanding equities through having a U.S. citizen spouse and children. Counsel requests a more careful review of the record.

The record contains a detailed report dated June 27, 1983, of an investigation relating to the applicant's activities in the recruiting and smuggling of aliens into the United States. A previous application for permission to reapply was denied on September 26, 1986. An immigration ordered the applicant excluded

and deported on June 15, 1987, based on that prior smuggling activity. The Board of Immigration Appeals 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) of the Act, 8 U.S.C. § 1231(a)(13), now codified as section 237(a)(1)(E) of the Act, 8 U.S.C. § 1227(a)(1)(E).

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.

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 the 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.