

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4

DEC 30 2004

FILE:



Office: SAN ANTONIO, TEXAS

Date:

IN RE:

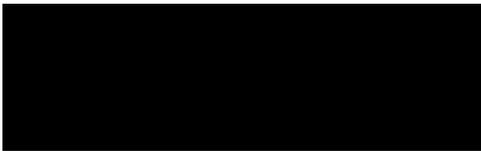
Applicant:



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:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Interim District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who on September 26, 1975, was convicted of the offense of aiding and abetting to the unlawful transportation of an alien in violation of 8 U.S.C. § 1324(a)(2) and 18 U.S.C. § 2. The applicant was sentenced to three years imprisonment suspended and three years probation. The applicant was subsequently deported from the United States. The record reflects that the applicant reentered the United States after his removal on an unknown date without a lawful admission or parole and without permission to reapply for admission in violation of § 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1326. The applicant is the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen daughter. He is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and he now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii) in order to remain in the United States.

The Interim District Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Interim District Director then denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Interim District Director Decision* dated April 5, 2003.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

.....

(ii) Other aliens.- Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception. - Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without

being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, counsel submits a statement in which he states that the basis of the denial was that the during the applicant's interview for adjustment of status he allegedly misrepresented his "arrest" for aiding and abetting the unlawful transportation of an alien. Counsel states that the applicant did not misrepresent the fact that he was arrested for aiding and abetting the unlawful transportation of an alien. In addition counsel states that the applicant believes that either the interviewing officer misunderstood his response or that he misunderstood the question and there was no willful intent to misrepresent his "arrest" to the interviewing official.

The record of proceedings reveals that on September 26, 1975, in the U.S. District Court, Southern District of Texas, Laredo Division, the applicant was convicted of the offense of aiding and abetting to the unlawful transportation an alien in violation of Title 8 U.S.C. § 1324(a)(2) and 18 U.S.C. § 2.

The AAO finds that the applicant's conviction in violation of 8 U.S.C. § 1324 and 18 U.S.C. § 2 shows that he was involved in alien smuggling by aiding and abetting an individual to enter the United States in violation of law. The record of proceeding clearly reflects that the applicant knowingly assisted an individual to try to enter the United States in violation of law and therefore the AAO finds the applicant inadmissible under section 212(a)(6)(E)(i) of the Ac, 8 U.S.C. § 1182(a)(6)(E)(i).

Section 212(a)(6)(E) of the Act provides, in pertinent part, 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 law is inadmissible.

. . . .

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

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

The Attorney General (now the Secretary of Homeland Security, [Secretary]) 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.

As stated above, section 212(d)(11) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(E)(i) of the Act is available to an applicant 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. In the instant case the applicant was not found assisting a qualifying family member and therefore no waiver is available to him.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

No purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.