



U.S. Citizenship  
and Immigration  
Services

144



FILE:



Office: BANGKOK, THAILAND

Date:

SEP 20 2002

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:

SELF-REPRESENTED

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

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

The applicant is a native and citizen of Australia who entered the United States on June 28, 1996, in possession of a valid B-2 nonimmigrant visa. On October 11, 2001, the applicant was convicted of the offense of Aiding and Abetting the Improper Entry of Aliens in violation of 18 U.S.C. § 2 and 8 U.S.C. § 1325(a)(3). On December 18, 2001, an Immigration Judge found the applicant removable from the United States under section 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225(b)(1) and on December 19, 2001, he was removed to Australia. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). He 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 travel to the United States to reside with his U.S. citizen spouse.

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See District Director Decision* dated November 6, 2003.

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

(A) Certain alien previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

.....

(ii) 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 the applicant submits a statement and a letter from his spouse. In his statement the applicant states that his spouse cannot leave the United States and relocate to Australia with him because she has joint custody of her two children with her ex-husband, her mother is sick and she must take care of her and because of her

allergies and skin disorder she would not be able to reside in Australia. In her letter the applicant's spouse states that her ex-spouse refuses to let her take their two children and relocate to Australia, she has recently purchased a home and she has a rare skin condition called Ichthyosis Vulgaris. She states that due to her skin condition she would not be able to reside in Australia due to hot temperatures and the chance of risking a heat stroke. In addition the applicant's spouse states that she has been treated for depression, anxiety, stress induced migraine headaches and gastro reflux disorder.

The record reflects that on October 11, 2001, in the U.S. District Court, Eastern District of Arkansas, the applicant was convicted of the Offense of Aiding and Abetting the improper entry of Aliens under 8 U.S.C. § 1325(a)(3) & 18 U.S.C. § 2.

8 U.S.C. § 1325 states in pertinent part:

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

(3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

Although 8 U.S.C. § 1325 does not contain the element of the offense of alien smuggling, the applicant was convicted in violation of both 8 U.S.C. § 1325 and 18 U.S.C. § 2.

18 U.S.C. § 2 states:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

The applicant's conviction in violation of 18 U.S.C. § 2 and 8 U.S.C. § 1325 shows that he was involved in alien smuggling by aiding and encouraging individual to enter the United States in violation of law. The record of proceeding clearly reflects that the applicant knowingly encouraged and assisted individuals to enter or try to enter the United States in violation of law and therefore the applicant is 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.

Section 212(a)(6)(E)(i) of the Act describes the basic smuggling activities that will suffice, even in the absence of a criminal conviction, to exclude or deport an alien from the United States.

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.