

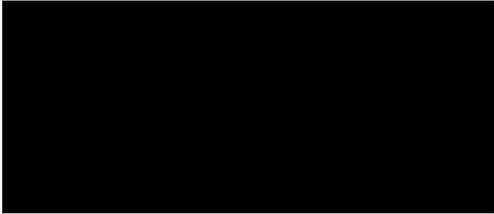
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN ANTONIO, TEXAS

Date:

MAR 09 2005

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

DISCUSSION: The application for permission to reapply for admission after removal was denied by the 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 August 6, 2002, was convicted in the United States District Court, Southern District of Texas, for the offense of transporting an alien within the United States by means of a motor vehicle in violation of Title 8 U.S.C. § 1324 and 18 U.S.C. § 2. The applicant was sentenced to three years probation. On August 6, 2002, the applicant was served with a Notice to Appear for a removal hearing before an Immigration Judge. On October 8, 2002, an Immigration Judge ordered the applicant removed from the United States. Consequently, on October 11, 2002, the applicant was removed from the United States pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony at any time after admission. The applicant 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). She 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 travel to the United States and reside with her U.S. citizen children.

The District Director determined that the applicant is not eligible for any exception or waiver under the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. See *District Director's Decision* dated July 29, 2003.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens 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 . . . [and who 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 alien 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's 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 asks for a favorable consideration because she is a single mother with four teenage children who would suffer extreme hardship if her waiver applicant were not granted. She further states that she has been a resident alien since May 15, 1971, and that she realized that she made an error in judgment by trying to travel with undocumented persons.

The applicant's conviction in violation of 18 U.S.C. § 2 and 8 U.S.C. § 1324 clearly indicates that she was involved in transporting illegal aliens in violation of section 274(a)(1)(A)(ii) of the Act, which states in pertinent part:

(a) Criminal Penalties.-

(1) (A) Any person who-

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law; . . .

Section 101(a)(43) of the Act defines the term "aggravated felony":

(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act.

Based on the above the AAO finds that the applicant's conviction is an aggravated felony for immigration purposes.

As noted above the applicant was removed from the United States pursuant to section 237(a)(2)(A)(ii) of the Act for having been convicted of an aggravated felony at any time after admission.

Section 237(a)(2)(A)(v) of the Act states:

(v) Waiver authorized. -Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

The applicant has not been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States and therefore she does not qualify for a waiver or any benefits under the Act.

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.