

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

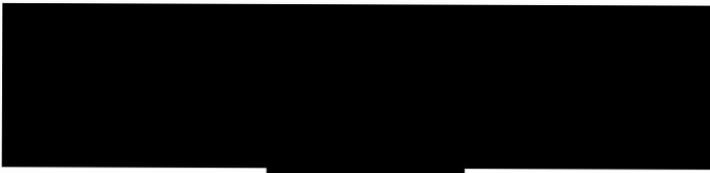
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H4

PUBLIC COPY



FILE:



Office: SAN ANTONIO, TEXAS

Date: **MAY 19 2006**

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, Chief
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) 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 January 12, 1989, was granted Lawful Permanent Resident (LPR) status. On May 30, 1997, in the United States District Court, Western District of Texas, he was convicted of the offenses of alien smuggling and illegal entry into the United States. The applicant was sentenced to six months imprisonment, suspended for three years. On May 30, 1997, a Notice to Appear (NTA) for a removal hearing before an immigration judge was issued. On July 23, 1997, an immigration judge ordered the applicant removed from the United States pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(A)(i) for having been present in the United States without being admitted or paroled. Consequently, on the same day the applicant was removed from the United States. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 and reside in the United States.

The District Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C) for having reasonable grounds to believe that he was involved in the illicit trafficking of a controlled substance, and section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for alien smuggling. The District Director concluded that the applicant is not eligible for any exception or waiver under the Act and denied the Form I-212 accordingly. *See District Director's Decision* dated May 27, 2003.

On appeal, the applicant states that he was never arrested and placed on probation by the District Court of Tarrant County, Texas, for possession of cocaine. In addition, the applicant states that he will be consulting an immigration lawyer and will be submitting a brief and/or evidence to the AAO within 60 days.

The appeal was filed on June 25, 2003, and to this date, approximately three years later, no documentation has been received. Therefore, the AAO will adjudicate the appeal based on the documentation contained in the record of proceeding.

In his decision, the District Director found the applicant inadmissible pursuant to section 212(a)(2)(C) of the Act. The District Director stated that on June 5, 1997, in the 371th District Court of Tarrant County, Texas, the applicant was convicted for possession of a controlled substance, namely less than one gram of cocaine and was placed on probation. The record of proceedings contains a conviction by the 371th District Court of Tarrant County, for an individual by the name of [REDACTED]

The record of proceedings contains no evidence to confirm that the applicant and the above-mentioned individual are the same person. The record does not indicate that the applicant has ever used the name [REDACTED] and there are no fingerprint charts to compare the two individuals. For these reasons, the AAO finds that it cannot be stated conclusively that the applicant and the individual who was convicted are the same person.

In *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977), the Board held that an actual conviction of a drug-trafficking offense or violation is not necessary to establish the ground of inadmissibility under section 212(a)(2)(C) of the Act. Further, one of the factors considered by the Federal Courts to determine whether possession of a controlled

substance shall also be deemed sufficient to support a finding that the individual has also engaged in illicit drug trafficking, is the amount of illicit drugs discovered. If the amount of the illicit drug is large enough, trafficking may be inferred on this basis alone. *Matter of Franklin*, 728 F.2d 994 (8th Cir. 1984).

Even if the applicant was convicted of above-mentioned offense, the conviction involved the possession of less than one gram of cocaine. The AAO finds that the information in the record of proceedings does not support a finding of inadmissibility under section 212(a)(2)(C) of the Act, as being an illicit trafficker. Nevertheless, this office finds that based on the applicant's conviction for alien smuggling, he is clearly inadmissible under section 212(a)(6)(E)(i) of the Act.

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.