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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[Redacted]

H4

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date: DEC 09 2008

Relates)

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(11).

ON BEHALF OF APPLICANT:

[Redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, 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 was found to be inadmissible to the United States under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for having aided an alien in attempting to enter the United States in violation of law. The applicant filed a Form I-485 application for adjustment of status based on an approved Form I-140, Immigrant Petition for Alien Worker. He has three U.S. citizen children. The applicant seeks a waiver of his inadmissibility in order to remain in the United States with his family.

The district director concluded that the applicant was inadmissible to the United States based on his conviction for having knowingly and willfully assisted an alien in entering the United States in violation of 18 U.S.C. § 2, and 8 U.S.C. § 1325. Accordingly, the director found the applicant statutorily ineligible for a waiver and denied the application. *Decision of the District Director*, dated June 28, 2006.

On appeal, the applicant submits a letter from his employer asserting that the applicant's removal to Mexico would be an extreme hardship on the applicant's family. *Tom Wegener's letter*, dated July 24, 2006.

Section 212(a) of the Act, 8 U.S.C. § 1182(a), provides, in pertinent part:

(a) Classes of Aliens Ineligible for Visas or Admission

.....

(6) Illegal Entrants and Immigration Violators

(E) Smugglers.-

- (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.
- (ii) Special rule in the case of family reunification.-Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), 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.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d) of the Act, 8 U.S.C. § 1182(d), provides in pertinent part:

(11) 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.

An alien who, at any time, knowingly 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. *See* Section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E).

On July 29, 1987, the applicant pled guilty to two counts of having aided and abetted illegal entry under 18 U.S.C. § 2 and 8 U.S.C. § 1325. He is, therefore, inadmissible to the United States under section 212(a)(6)(E)(i) of the Act. The AAO notes that an exception to the section 212(a)(6)(E) ground of inadmissibility is available to certain eligible immigrants who only aided their spouse, parent, son, or daughter to illegally enter the United States. *See* Section 212(a)(6)(E)(ii). The record, however, fails to establish that the violations of law committed by the applicant were limited to assisting a spouse, parent, son or daughter to enter the United States. Accordingly, the applicant has not demonstrated that he is eligible for the exception set forth in section 212(a)(6)(E)(ii) of the Act.

A section 212(d) waiver is dependent upon a showing that the alien (1) only aided 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; and (2) the alien either, had been admitted to the United States as a lawful permanent resident alien and did not depart the United States under an order of removal, or, is seeking admission as an eligible immigrant. While the record in the instant case reflects that the applicant is seeking admission as an eligible immigrant, it does not, as just noted, demonstrate that the individuals aided by the applicant to enter the United States in violation of law were limited to his spouse, parent, son or daughter. The AAO, therefore, finds that the applicant is also statutorily ineligible for the waiver of the inadmissibility in section 212(d) of the Act.

The applicant is subject to the provisions of section 212(a)(6)(E) of the Act, which are very specific and applicable and he has not established eligibility for relief. As the applicant is statutorily inadmissible to the United States, no purpose would be served by a consideration of his claim to extreme hardship. Therefore, the appeal will be dismissed.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.