U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

prevent clearly unwarranted invasion of personal privacy

[redacted]

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FEB 03 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [redacted]

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:

[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.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Mexico. On May 23, 1999, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for knowingly encouraging, assisting, abetting, aiding any other alien to enter or to try to enter the United States in violation of law. On August 27, 1999, an Immigration Judge found the applicant removable and granted him voluntary departure until November 25, 1999, in lieu of removal. The applicant failed to submit documentary evidence to show that he departed the United States on or prior to November 25, 1999. The applicant's failure to prove his departure on or prior to November 25, 1999, changed the voluntary departure order to an order of removal. Subsequently the applicant was removed from the United States on January 9, 2001. The applicant is therefore inadmissible pursuant to 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 reside in the United States with his U.S. citizen spouse.

The Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(E)(i) of the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated July 9, 2004.

On appeal the applicant submits a statement and a letter from his spouse. The applicant states that he departed the United States on November 25, 1999, in compliance with the voluntary departure order. In addition he states that the Immigration Officer at the Port of Entry did not date his document in order to be able to show the date he departed the United States, but only initialed it. Furthermore the applicant states that his attorney did not submit to the Immigration and Naturalization Service, (now Citizenship and Immigration Services (CIS)), documentation to show his departure and that because of bad advice from his attorney he reentered the United States with his border crossing card. The applicant submits a declaration from his spouse attesting to the same facts, and that his Form I-212 should be approved due to the confusion created by the applicant's two attorneys. The applicant does not dispute the fact that he assisted an individual to try to enter the United States in violation of law but states that his family has suffered hardship and medical problems due to this and that he is really sorry for his actions.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. The file does not reveal that the applicant departed the United States on or before November 25, 1999. In addition the applicant has not submitted any documentary evidence, aside from his and his spouse's statements, to prove that he departed the United States prior to the expiration of the voluntary departure order.

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 applicant is 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.
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> . . . .
>
> (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.