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

H4

[redacted]

FILE: [redacted] Office: SAN ANTONIO, TEXAS Date: AUG 2 8 2006

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.

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 was admitted into the United States as a Lawful Permanent Resident (LPR) on July 22, 1969. On December 28, 1994, in the County Court of Grand Forks, County, North Dakota, the applicant was convicted of the offense of theft of property. In addition, on July 21, 1989, in the District Court of Minnesota, Seventh Judicial District, the applicant was convicted of the offense of burglary in the third degree. On June 13, 1993, the applicant was sentenced to one year and one day of imprisonment. On December 28, 1994, an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was issued. On July 29, 1996, an immigration judge ordered the applicant deported in absentia pursuant to section 241(a)(2)(A)(ii)[1] of the Immigration and Nationality Act (the Act), for having been convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct. Consequently, on August 31, 2000, the applicant was deported from the United States. The record reflects that the applicant reentered the United States on an unknown date, but prior to September 28, 2000, the date he was encountered by the Immigration and Naturalization Service (INS) in the Alamosa County Colorado jail, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). On December 6, 2000, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued and on December 19, 2000, the applicant was removed to Mexico. The record further reflects that the applicant reentered the United States on or about September 28, 2003. On September 30, 2003, a Form I-871 was issued pursuant to section 241(a)(5) of the Act. The applicant is 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 to remain in the United States and reside with his U.S. citizen spouse and children.

The District Director determined that the applicant is not eligible for any exception or waiver under the Act and denied Form I-212 accordingly. *See District Director's Decision* dated November 14, 2002.

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-
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> (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.]

[1] Now section 237(a)(2)(A)(ii) of the Act.

> (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.

On appeal, counsel states that the applicant had been a lawful resident since 1969, is married to a U.S. citizen, has four U.S. citizen children, has parents who are U.S. citizens, and has siblings who are either U.S. citizens or lawful permanent residents. In addition, counsel states that the applicant suffers from severe emotional distress, paranoia and schizophrenia, and cannot function socially. Furthermore, counsel states that because of his mental condition, the applicant requires constant medical care and supervision, which he cannot get in Mexico because he does not have any relatives there.

Before the AAO can weigh the discretionary factors in this case, must first determine if the applicant can benefit from a waiver of inadmissibility due to his criminal convictions. Based on the applicant's convictions he is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of crimes involving moral turpitude. The applicant was sentenced to one year and one day for the offense of burglary in the 3rd degree.

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

> (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least 1 year.

In the instant case the applicant's conviction is an aggravated felony for immigration purposes.

Section 212(h) of the Act provides, in pertinent part, that:

> No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States.

As noted above the applicant was granted lawful permanent resident status on July 22, 1969. Since the applicant was previously admitted for lawful permanent residence and has been convicted of an aggravated felony no waiver is available to him under section 212(h) of 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.