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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 13 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: 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 into the United States after Deportation or Removal (Form I-212) 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 applicant is a native and citizen of Mexico who on April 19, 1979, was granted Lawful Permanent Resident (LPR) status. On June 1, 1981, in the U.S. Magistrate, El Centro, California the applicant was convicted of the offenses of conspiracy, illegal entry, and aiding and abetting aliens to enter the United States illegally in violation of 18 U.S.C. § 371, 8 U.S.C. § 1325 and 18 U.S.C. § 2. The applicant was deported from the United States. **On May 19, 1993, the applicant applied for admission into the United States. He was found** excludable pursuant to sections 212(a)(6)(E)(i), 212(a)(6)(B)(i)(A), 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act). The applicant filed for suspension of deportation, which was denied by an immigration judge on March 16, 1994. The immigration judge found the applicant excludable pursuant to section 212(a)(6)(E)(i) of 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, and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or other valid entry document. An appeal filed with the Board of Immigration Appeals (BIA) was dismissed on September 30, 1994. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. mother. He is inadmissible under section 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and he 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 United States and reside with his family.

The Director determined that the applicant is not eligible for any exemption or waiver under section 212(a)(6)(E)(i) of the Act, and that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. *See Director's Decision* dated December 20, 2004.

On appeal, the applicant submits a letter in which he states that he has been residing in Mexico for the past 11 years; all his family resides in the United States and he feels that he has been separated from his family too long. In addition, the applicant states that his daughter is growing up without a father, his spouse has to make all the financial payments and he would like to enter the United States in order to work and provide for his family. Finally, the applicant states that he did not know the consequences of his past actions and asks for forgiveness.

Before the AAO can adjudicate the appeal and weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for any relief under the Act. The applicant's conviction in violation of 18 U.S.C. § 2 and 8 U.S.C. § 1325 shows that he was involved in alien smuggling by aiding and encouraging individuals to enter the United States in violation of law and, therefore, he 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.

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.