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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEW DELHI Date: NOV 14 2008

IN RE: [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 Acting Officer in Charge, New Delhi, India, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who, on June 20, 1997, pled guilty to and was convicted of conspiracy to commit crimes against the United States with the intent to defraud, conspiracy to defraud the United States and failure to appear for sentencing. The applicant was sentenced to 46 months in jail and 3 years of supervised release. On September 7, 2000, the applicant was placed into immigration proceedings. On November 1, 2000, the immigration judge denied the applicant's application for withholding of removal, the applicant withdrew his application for convention against torture and the immigration judge ordered the applicant removed from the United States. On November 10, 2000, the applicant married his naturalized U.S. citizen spouse. On December 6, 2000, the applicant was removed from the United States and returned to India where he has since remained. On October 9, 2001, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On June 27, 2003, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), and 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 the United States and reside with his U.S. citizen spouse and U.S. citizen step-children.

The acting officer in charge determined that the applicant was inadmissible pursuant to sections 212(a)(2)(I)(i) and (ii) and 212(a)(6)(E)(i) of the Act, 8 U.S.C. §§ 1182(a)(2)(I)(i) and (ii) and 1182(a)(6)(E)(i) for which there is no waiver or the applicant was not eligible for a waiver and thus no purpose would be served in the favorable exercise of discretion in adjudicating the Form I-212. The acting officer in charge denied the Form I-212 and rejected the Form I-601 accordingly. *See Acting Officer in Charge's Decision* dated March 31, 2005.

On appeal, counsel contends that the applicant should be granted permission to reapply for admission because of the hardship to his spouse and step-children. *See Applicant's Brief,* dated April 26, 2005. In support of the appeal, counsel only submitted the above-referenced brief. The entire record was reviewed in making a decision in this case.

The applicant's conviction records indicate that, on June 20, 1997, the applicant pled guilty to counts 1 and 2 of the Information which constituted the crimes of conspiracy to commit crimes against the United States with the intent to defraud and conspiracy to defraud the United States. Count 1 of the Information, to which the applicant pled guilty, charged the applicant with nine violations of law constituting conspiracy to commit crimes against the United States with the intent to defraud and included, in pertinent part: (1) bringing aliens into the United States at a place other than a designated port of entry; (2) harboring aliens; (3) encouraging and inducing aliens to enter the United States knowing this to be illegal; and (4) money laundering in violation of 18 U.S.C. § 1956.

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
>
> . . . .
>
> (2) . . .

(I) MONEY LAUNDERING- Any alien--

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18, United States Code (relating to laundering of monetary instruments); or
(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible

. .

(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.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested.

The applicant's conviction records reflect that the applicant pled guilty to bringing aliens into the United States at a place other than a designated port of entry, harboring aliens, and encouraging and inducing aliens to enter the United States knowing this to be illegal as part of a conspiracy to commit crimes against the United States with the intent to defraud. Aliens 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). The AAO notes that an exception to the section 212(a)(6)(E) ground of inadmissibility is available to an eligible immigrant who only aided their spouse, parent, son, or daughter to enter the United States in violation of law. *See* Section 212(a)(6)(E)(ii). There are no indications in the record that the applicant is or should be classified as such.

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.

The record in the instant case reflects that the applicant has never been admitted to the United States as a lawful permanent resident and he departed the United States under an order of removal. The record reflects further that the aliens the applicant encouraged, induced, assisted, abetted, or aided in entering the United States in violation of law were not his spouse, parent, son or daughter. The AAO, therefore, finds that the applicant is statutorily ineligible for the exception and waiver to the inadmissibility grounds for smuggling.

Additionally, aliens who have engaged in, are engaging in, or seek to enter the United States in order to engage in, or is or has been a knowing aider, abettor, assister, conspirator or colluder with others in an offense described in section 18 U.S.C. § 1956, i.e., money laundering, is inadmissible and there is no waiver provided under the Act for this ground of inadmissibility. The applicant's conviction records reflect that the applicant pled guilty to money laundering in violation of 18 U.S.C. § 1956 as part of a conspiracy to commit crimes against the United States with the intent to defraud. The AAO, therefore, finds that the applicant is subject to a permanent ground of inadmissibility pursuant to sections 212(a)(2)(I)(i) and (ii) 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.

The applicant is subject to the provisions of sections 212(a)(2)(I)(i) and (ii) and 212(a)(6)(E) of the Act, which are very specific and applicable. Therefore, 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. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed.

The AAO notes, however, that the acting officer in charge erred in rejecting the Form I-601. Chapter 43 of the Adjudicator's Field Manuel states, in pertinent part:

> Chapter 43 Consent to Reapply After Deportation or Removal
>
> . . . .
>
> 43.2 Adjudication Process
>
> . . . .
>
> (d) Determination of Whether the Approval Would Serve Any Purpose. In processing an application for consent to reapply filed by such an alien, you should determine whether its approval would enable to alien to be admitted to the U.S. If even after approval of consent to reapply the alien would not be admissible, the application should be denied as its approval would serve no purpose. For example, if the alien is presently inadmissible under section 212(a)(4) as likely to become a public charge, deny the application since the alien would be otherwise inadmissible, and no purpose would be served in granting the I-212.
>
> Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. *If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first.* If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose. (emphasis added)

As dictated by the Adjudicator's Field Manual, the acting officer in charge should have adjudicated the Form I-601 and then adjudicated the Form I-212. In the instant case, however, the AAO finds that, if the acting officer in charge had adjudicated the Form I-601 prior to adjudicating the Form I-212, the Form I-601 would have been denied as the applicant is subject to the provisions of sections 212(a)(2)(I)(i) and (ii) and 212(a)(6)(E) of the Act, which are very specific and applicable and no purpose would have been served in discussing whether the applicant merited a waiver of the grounds of inadmissibility pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of a crime involving moral turpitude, pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). As such, the Form I-212 would have been subsequently denied since the applicant is otherwise inadmissible and no purpose would be served in granting the Form I-212. As the acting officer in charge's error in the procedure of adjudicating the applicant's Forms I-601 and I-212 does not result in any harm to the applicant, there is no need for the acting officer in charge to adjudicate the rejected Form I-601.

ORDER: The appeal is dismissed.