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U.S. Citizenship
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Services

[REDACTED]

H1

FILE: [REDACTED] Office: CHICAGO, IL
RELATES)

Date: **MAR 13 2009**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(d) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)

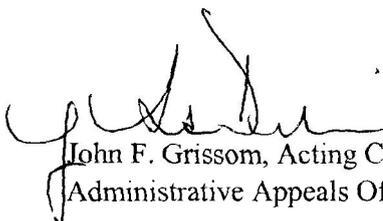
ON BEHALF OF APPLICANT:

[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 District Director, Chicago, Illinois, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) 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 Mexico who, on March 8, 1993, was placed into immigration proceedings after he had entered the United States without inspection. The applicant did not provide immigration officers with his true identity. On May 19, 1993, the applicant pled guilty to and was convicted of a conspiracy to knowingly and recklessly transport and harbor illegal aliens in furtherance of their unlawful entry into the United States in violation of 18 U.S.C. § 371 and 8 U.S.C. §§ 1324(a)(1)(B) and (C), under the name "██████████". The applicant was sentenced to seven months in jail and 2 years of probation. On October 12, 1993, the immigration judge ordered the applicant removed from the United States under the name "██████████". On the same day, the applicant was removed from the United States and returned to Mexico. On November 10, 1995, the applicant married his U.S. citizen spouse, ██████████ in Mexico. On August 14, 1996, ██████████ filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The applicant indicated that he reentered the United States without inspection in December 1995. On August 15, 1996, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On September 3, 1996, the applicant filed the Form I-601. On June 22, 2004, the Form I-130 was approved.

The district director determined that the applicant is inadmissible pursuant to sections 212(a)(6)(E) and 212(a)(9)(C)(i) of the Act, 8 U.S.C. §§ 1182(a)(6)(E) and 1182(a)(9)(C)(i), for smuggling aliens and illegally reentering the United States after having been removed. The district director determined that no waiver or exception is available to the applicant and denied the Form I-601 accordingly. *See District Director's Decision*, dated June 2, 2004.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(E) of the Act. *See Form I-290B, dated July 1, 2004*. In support of his contentions, counsel submits only the referenced Form I-290B. The entire record was reviewed in rendering a decision in this case.

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.

Counsel, on the Form I-290B appealing the denial of the applicant's Form I-601, contends that the applicant only pled guilty in order to be released from custody. The record reflects that the applicant pled guilty to and was convicted of conspiracy to knowingly and recklessly transport and harbor illegal aliens in furtherance of their unlawful entry into the United States in violation of 18 U.S.C. § 371 and 8 U.S.C. §§ 1324(a)(1)(B) and (C). “[C]ollateral attacks upon an [applicant’s] conviction do not operate to negate the finality of his conviction unless and until the conviction is overturned.” *In Re Max Alejandro Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted.) Moreover, this office cannot go behind the judicial record to determine the guilt or innocence of an alien. *See Id. and Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980).

Counsel contends that the applicant denies that he actually was engaged in smuggling activities and was only driving the car so that he could get from one location to another location in California. Counsel contends that the applicant only transported illegal aliens within the United States. Counsel also contends that the applicant did not receive any payment and denies any actual knowledge of what was happening. The indictment reflects that the counts to which the applicant pled guilty establish that the applicant knowingly participated in a prearranged plan to transport undocumented aliens away from the border after their unlawful entry, which constitutes clear and convincing evidence that he knowingly encouraged, aided and abetted such unlawful entry within the meaning of section 212(a)(6)(E) of the Act. *See Hernandez-Guadarrama v. Ashcroft*, 394 F 3d 674 (9th

Circuit, 2005) and *Soriano v. Gonzales*, 484 F. 3d 318 (5th Circuit, 2007) (knowingly transporting illegal aliens after entry based on prearranged plan constitutes knowing encouragement and assistance of alien's unlawful entry under section 212(a)(6)(E) of the Act).

The AAO therefore finds that the applicant is inadmissible pursuant to section 212(a)(6)(E) of the Act. 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 are inadmissible. An exception to the section 212(a)(6)(E) ground of inadmissibility is available to an eligible immigrant who only aided his or her spouse, parent, son, or daughter to enter the United States in violation of law, prior to May 5, 1988. *See section 212(a)(6)(E)(ii)*.

A waiver of inadmissibility 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 aliens smuggled by the applicant were not relatives of the applicant. The AAO, therefore, finds that the applicant is statutorily ineligible for the exception set forth in section 212(a)(6)(E)(ii) of the Act or the section 212(d) waiver of inadmissibility for alien smuggling. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.