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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 19 2007

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: 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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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 Mexico who, on September 18, 1990, was admitted to the United States as a lawful permanent resident. On September 18, 1992, the applicant was convicted of willfully and knowingly aiding and abetting aliens in entering the United States at a time and place other than as designated by immigration officers and in eluding examination and inspection by immigration officers in violation of 8 U.S.C. § 1325 and 18 U.S.C. § 2. The applicant was sentenced to 30 days in jail. On July 6, 1995, the applicant was arrested for spousal beating. The applicant was convicted of willful infliction of corporal injury on a spouse, cohabitant, or parent of the perpetrator's child, in violation of section 273.5(a) of the California Penal Code and was sentenced to 30 days in jail and 36 months of probation. On March 28, 1999, the applicant applied for admission to the United States at the San Luis, Arizona Port of Entry. The applicant presented his lawful permanent resident card. Upon inspection the applicant admitted to his arrest and conviction for smuggling aliens into the United States. On March 29, 1999, the applicant was placed into proceedings. On April 28, 1999, the immigration judge ordered the applicant removed. On April 28, 1999, the applicant was removed from the United States.

On April 5, 2000, immigration officers apprehended the applicant after he had reentered the United States without a lawful admission or parole and without permission to reapply for admission. On April 6, 2000, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). On April 7, 2000, the applicant pled guilty to and was convicted of illegal entry into the United States in violation of 8 U.S.C. § 1325 and was sentenced to 75 days in jail. The applicant was removed to Mexico on June 16, 2000. On August 20, 2000, immigration officers apprehended the applicant after he had reentered the United States without a lawful admission or parole and without permission to reapply for admission. On August 22, 2000, a Form I-871 was issued and the applicant was removed to Mexico on August 24, 2000. On January 2, 2001, immigration officers apprehended the applicant after he had reentered the United States without a lawful admission or parole and without permission to reapply for admission. On January 2, 2001, a Form I-871 was issued. On January 3, 2001, the applicant pled guilty to and was convicted of illegal entry into the United States in violation of 8 U.S.C. § 1325 and was sentenced to 90 days in jail. The applicant was removed to Mexico on April 2, 2001. On March 15, 2002, immigration officers apprehended the applicant after he had reentered the United States without a lawful admission or parole and without permission to reapply for admission. On March 15, 2002, a Form I-871 was issued. On March 18, 2002, the applicant pled guilty to and was convicted of illegal entry into the United States in violation of 8 U.S.C. § 1325 and was sentenced to 120 days in jail. The applicant was removed to Mexico on July 12, 2002. On January 30, 2003, immigration officers apprehended the applicant after he had reentered the United States without a lawful admission or parole and without permission to reapply for admission. On January 30, 2003, a Form I-871 was issued. On January 31, 2003, the applicant pled guilty to and was convicted of illegal entry into the United States in violation of 8 U.S.C. § 1325 and was sentenced to 100 days in jail. The applicant was removed to Mexico on May 9, 2003. On June 8, 2003, immigration officers apprehended the applicant after he had reentered the United States without a lawful admission or parole and without permission to reapply for admission. On June 9, 2003, a Form I-871 was issued. On June 11, 2003, the applicant pled guilty to and was convicted of illegal entry into the United States in violation of 8 U.S.C. § 1325 and was sentenced to 120 days in jail. The applicant was removed to Mexico on October 3, 2003.

On February 6, 2006, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) for seeking admission after being ordered removed. The applicant 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 adjust his status to that of lawful permanent resident and reside in the United States with his U.S. citizen children.

The director determined that the applicant was inadmissible pursuant to sections 212(a)(6)(E), 212(a)(9)(A) and 212(a)(9)(C) of the Act, 8 U.S.C. §§ 1182(a)(6)(E), 1182(a)(9)(A) and 1182(a)(9)(C), for aiding and abetting an alien to enter the United States in violation of law, for seeking admission after having been removed and for entering the United States without being admitted after having been removed. The director determined 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 August 21, 2006.

On appeal, the applicant contends that his family is seriously affected by his absence because he is unable to support them economically. *See Form I-290B,* dated September 12, 2006. In support of the appeal, the applicant 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
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> . . . .
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> (6) Illegal Entrants and Immigration Violators
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> (E) Smugglers.-
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> (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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> (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.

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. *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).

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 reflects that the aliens the applicant aided and abetted in entering the United States in violation of law were three individuals who had no relation to him. 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.

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 section 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.

ORDER: The appeal is dismissed.