

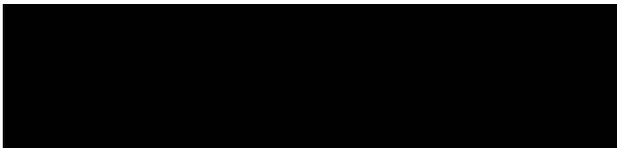
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U.S. Department of Homeland Security
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U.S. Citizenship
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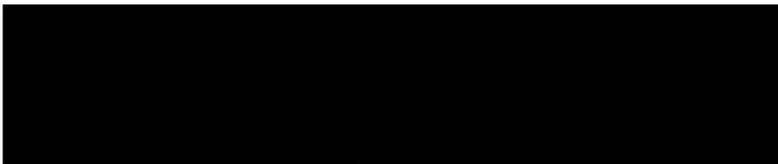
Hy

FILE: [REDACTED] Office: SAN ANTONIO, TEXAS Date: **MAY 23 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) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:



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 after removal was denied by the District Director, San Antonio, Texas. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed. The application for permission to reapply for admission after removal is denied.

The applicant is a native and citizen of Mexico who was apprehended on June 27, 1983, for alien smuggling. On June 29, 1983, a U.S. Magistrate for the U.S. District Court, Western District of Texas, found the applicant guilty of entering the United States without inspection, in violation of Title 8, U.S.C. § 1325, and sentenced the applicant to 179 days in prison. On December 15, 1983, an immigration judge ordered the applicant deported from the United States, and on the same day, a Warrant of Deportation (Form I-205) was entered against the applicant. On December 16, 1983, the applicant was deported from the United States. On some unknown date, the applicant reentered the United States without inspection. On March 30, 1984, the applicant married [REDACTED], a United States citizen, in Texas. The applicant departed the United States, and on July 10, 1986, he attempted to enter the United States by presenting an immigrant visa issued at Mexico City on July 9, 1986. On June 15, 1987, an immigration judge ordered the applicant excluded and deported from the United States. In June 1987, the applicant was again deported from the United States. On an unknown date, the applicant again reentered the United States without inspection. The applicant is inadmissible to the United States under sections 212(a)(6)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A), 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), and 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). He now seeks permission to reapply for admission into the United States, in order to reside with his United States citizen wife and children.

The District Director determined that the applicant was inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for being removed from the United States, and section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for alien smuggling. The District Director found that “[a] waiver of [section 212(a)(6)(E)(i)] is authorized pursuant to section 212(a)(6)(E)(iii) of the Act, as discussed in section 212(d)(11) of the Act...[However,] [a] review of the evidence of record shows that [the applicant] [is] not an 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. The evidence of record further shows that the aliens whose illegal entry [the applicant] aid[ed] and abetted were not, in any case or in all cases, [the applicant’s] spouse, parent, son, or daughter. Consequently, [the applicant] [does] not qualify for a waiver of this ground of inadmissibility.” *District Director’s Decision*, dated April 19, 2002. The District Director determined that a “waiver of admissibility under 212(a)(9) of the Act would serve no purpose as a waiver of [the applicant’s] other ground of inadmissibility is not available to [him]” and he denied the applicant’s Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Id.* On January 24, 2003, the AAO dismissed the appeal finding the applicant ineligible for a waiver of the 212(a)(6)(E)(i) ground of inadmissibility. *Decision of the AAO*, dated January 24, 2003.

In the present motion to reopen and reconsider, the applicant, through counsel, asserts that the AAO “relied upon insufficient evidence to conclude that [the applicant] is inadmissible.” *Motion to Reopen*, filed February 27, 2003. Counsel claims that the AAO relied on “a report dated June 27, 1983, the denial of the previous application to reapply dated September 26, 1986, and the immigration judge’s order that the applicant be excluded and deported on June 15, 1987 based upon a prior order for deportation... This evidence is not sufficient to prove that [the applicant] knowingly aided and abetted aliens to enter the United States unlawfully.” *Id.* The AAO notes that the June 17, 1983 investigative report clearly states that the applicant aided in smuggling six illegal aliens from Mexico, for which he was to receive payment. Counsel contends that the report “should not be provided any significant weight because it is a blatant hearsay document.” *Id.* The AAO notes that in immigration proceedings, documentary evidence need not comport with the strict rules of evidence. Instead, as in deportation proceedings, “such evidence need only be probative and its use fundamentally fair, so as not to deprive an alien of due process of law.” *Matter of Velasquez*, 19 I&N Dec. 377, 380 (BIA 1986); *see also Matter of D*, 20 I&N Dec. 827, 831 (BIA 1994). The AAO notes that under section 291 of the Act, 8 U.S.C. § 1361, the applicant has the burden of proof to establish that he is eligible for the benefit sought, and he has failed to prove that he is not inadmissible under section 212(a)(6)(E)(i) of the Act, for alien smuggling.

The issues raised by counsel in the motion to reconsider were previously raised in the initial appeal, and those issues were addressed by the AAO. Counsel did not identify any legal errors in the prior AAO or District Director’s decisions, and aside from counsel’s claim that the June 27, 1983 report cannot be relied upon because it is hearsay, no new information or evidence was submitted in the motion to reconsider.

8 C.F.R. § 103.5(a) states in pertinent part:

(a) Motions to reopen or reconsider

....

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

....

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The issues raised in counsel's motion to reopen and reconsider were thoroughly addressed in the previous AAO decision, and counsel failed to establish any legal error in the AAO decision or the District Director's decision.

Because counsel failed to identify any erroneous conclusion of law or statement of fact in his brief, the motion will be dismissed.

ORDER: The motion is dismissed and the previous decisions of the District Director and the AAO are affirmed. The application for permission to reapply for admission after removal is denied.