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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

#4

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 15 2008**

[REDACTED]; AND
[REDACTED] (RELATE)

IN RE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative indicating that the applicant is represented by a nonprofit organization. However, the nonprofit organization listed on the Form G-28 is not authorized as an accredited representative, is engaging in the unauthorized practice of law, and may not file any applications or petitions before the AAO or any other immigration offices. All representations will be considered but the decision will be furnished only to the applicant.

The applicant is a native and citizen of Mexico who, on October 18, 1985, was apprehended by immigration officials. The applicant made an oral claim to birth in Phoenix Arizona before he was placed into secondary inspections. The applicant made several more oral false claims to U.S. citizenship before admitting that he was not entitled to enter the United States. On the same day, the applicant was placed into immigration proceedings. On October 30, 1985, the immigration judge ordered the applicant removed from the United States. On the same day a warrant for the applicant's removal was issued and the applicant was removed from the United States and returned to Mexico. On March 8, 1987, the applicant pled guilty to and was convicted of consuming liquor in a broken package in a public place in violation of section 4-244.20 of the Arizona Revised Statutes. The applicant was sentenced to time served. On March 3, 1990, immigration officers apprehended the applicant on two separate occasions. Following his first apprehension, the applicant was allowed to return voluntarily to Mexico. On the second occasion of the same day, the applicant was placed into immigration proceedings. On March 30, 1990, the applicant pled guilty to and was convicted of entering the United States illegally in violation of 8 U.S.C. § 1325. The applicant was sentenced to time served. On February 3, 1992, the immigration judge ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). The applicant was granted a stay of removal under the "Proyecto San Pablo" Class Action Suit. On February 10, 1995, the BIA dismissed the applicant's appeal. On November 19, 1997, a warrant for the applicant's removal was issued. On November 20, 1997, the applicant was removed from the United States and returned to Mexico.

On February 4, 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. The applicant was removed to Mexico on February 4, 2003. On February 6, 2003, 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 March 11, 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 March 11, 2003, a Form I-871 was issued. However, on April 2, 2003, the warrant was terminated pursuant to the "Proyecto San Pablo" Class Action Suit. On March 20, 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 three years of probation.

On October 25, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Worker (Form I-140) filed on his behalf. On the same day, 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 family.

The director determined that the applicant is subject to the reinstatement provisions under section 241(a)(5) of the Act and that no waiver is available to him under section 212(a)(9)(A)(iii) of the Act. The director denied the Form I-212 accordingly. *See Director's Decision* dated November 20, 2006.

On appeal, the applicant contends that he has been a member of the Proyecto San Pablo since 1989, the immigration court failed to consider such membership and he should not have been ordered removed in the past because of his membership in this group. He contends that the consequences of these removals resulted in a domino effect. *See Form I-290B*, dated December 13, 2006. Although, the applicant, on Form I-290B, indicates that he will submit a brief in support of his appeal within thirty days, the AAO has not received any further evidence or brief in support of this appeal. Therefore, the record is considered complete. 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.

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). 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, 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 record reflects that the applicant provided sworn testimony before immigration officers and during immigration hearings that he attempted to smuggle his mother and brother into the United States on two occasions on March 3, 1990. The transcript of the immigration judge's oral findings, issued on February 3, 1992, reflects that the applicant attempted to smuggle both his mother and brother into the United States, as evidenced by his testimony under oath. While the applicant's mother is an alien who falls under the exception to section 212(a)(6)(E)(ii) of the Act, the applicant's brother does not and must be considered an alien, the applicant assisted, aided and abetted in entering the United States in violation of law. 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.