

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4

FILE:

Office: HOUSTON, TEXAS

Date:

OCT 30 2008

IN RE:

Applicant:

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:

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 application for permission to reapply for admission after removal was denied by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia who initially entered the United States on August 24, 1999, on a B-2 nonimmigrant visa. On December 29, 2000, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On May 13, 2002, the applicant's Forms I-130 and I-485 were approved and the applicant became a lawful permanent resident. On August 5, 2004, a United States District Court judge for the Southern District of Texas convicted the applicant of Conspiracy to Commit Alien Smuggling, and sentenced her to time served and three (3) years probation. On September 10, 2004, a Final Administrative Removal Order (Form I-851A) was entered against the applicant. On the same day, a Warrant of Removal/Deportation (Form I-205) was issued against the applicant. On September 27, 2004, the applicant was removed from the United States. On November 3, 2006, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On March 16, 2007, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), and section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i). She now 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 reside with her United States citizen husband.

The District Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for alien smuggling, and that there is no waiver available for this ground of inadmissibility. *District Director's Decision*, dated March 6, 2007. Accordingly, the District Director denied the applicant's Form I-212. *Id.*

Section 212(a)(6)(E) of the Act provides, in pertinent part, that:

- (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.

- (iii) Waiver authorized.—For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides, in pertinent part, that:

The Attorney General [now, Secretary, Department of Homeland Security] 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.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the [Secretary] has consented to the alien's reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

The AAO notes that based on the applicant's inadmissibility to the United States under section 212(a)(6)(E)(i) of the Act, she would need to establish that she was attempting to smuggle her spouse, parent, son, or daughter into the United States, to be eligible for a waiver under section 212(d)(11) 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 AAO notes that there is no evidence in the record that the applicant was attempting to smuggle only her spouse, parent, son or daughter into the United States; therefore, the applicant is subject to the provisions of section 212(a)(6)(E)(i) of the Act and no waiver is available to her as she knowingly encouraged, induced, assisted, abetted, or aided other aliens to enter the United States in violation of law.

The applicant's husband states they "made a terrible mistake which [they] have paid the consequences.... [They] are very sorry for what happened and regret every moment been separated.... [The applicant] has always been very dependent, hard worker, trustworthy, honest and responsible person with excellent moral values." *Letter from* [REDACTED] dated September 29, 2006. The applicant states that she "fear[s] for [her husband's] life when in Colombia." *Form I-290B*, filed March 16, 2007. The AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's husband, but it will be just one of the determining factors.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

The favorable factors in this matter are the applicant's family ties to a United States citizen, her husband, and general hardship he may experience. The AAO finds that the unfavorable factor in this case is the applicant's conviction for conspiracy to commit alien smuggling.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones. Therefore, in addition to the previous finding that the applicant was statutorily inadmissible under section 212(a)(6)(E)(i) and no purpose would be

served in granting permission to reapply for admission, the AAO also finds that the application should be denied as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.