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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

Atty

SEP 24 2009

FILE:

Office: SAN BERNARDINO, CA

Date:

[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:

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, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, California, 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 October 27, 1997, was apprehended by immigration officers near Salton City, California. The applicant failed to provide his true identity and claimed to be a U.S. citizen, "[REDACTED]". The applicant had a female passenger in the car, whom he identified as "[REDACTED]" a U.S. citizen. Upon further questioning the female passenger admitted that her true name was [REDACTED] and that she was a Mexican citizen. She stated that the applicant was a family friend who had agreed to help her to enter the United States illegally. She stated that the applicant agreed to pick her up in San Luis, Sonora, Mexico and transport her to her sister's house in Rioalto, California. The applicant had driven the female passenger through the San Luis, Arizona port of entry. The applicant was not charged and was released because he had falsely identified himself as a U.S. citizen.

On May 26, 1999, the applicant pled guilty to false personation as [REDACTED] in violation of section 529 of the California Penal Code. The applicant was sentenced to two days in jail and three years of probation.

On March 12, 2000, the applicant appeared at the El Paso, Texas port of entry. The applicant presented an I-586 border crossing card bearing the name "[REDACTED]". The applicant was placed into secondary inspection. The applicant admitted that he was not the true owner of the document and that he did not have valid documentation to enter the United States. The applicant admitted that he was aware that it was illegal to attempt to enter the United States utilizing this document. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud. On March 12, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

On April 5, 2000, immigration officers apprehended the applicant. 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). The applicant had reentered the United States without inspection on March 12, 2000. On April 6, 2000, the applicant was removed from the United States and returned to Mexico.¹

On April 14, 2000, the applicant appeared at the San Luis, Arizona port of entry. The applicant presented a lawful permanent resident card bearing the name [REDACTED]. The applicant was placed into secondary inspection. The applicant admitted that he was not the true owner of the document and that he did not have valid documentation to enter the United States. The applicant admitted that he was aware that it was illegal to attempt to enter the United States utilizing this document. The applicant failed to provide his true identity to immigration officers. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to enter the United States by fraud. On April 14, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act under the name [REDACTED].

¹ The AAO notes that the applicant's reentry into the United States without inspection after having been removed renders him inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C).

On May 6, 2006, the applicant married his U.S. citizen spouse in Las Vegas, Nevada. On August 31, 2006, the applicant's conviction for false personation was reduced to a misdemeanor and dismissed pursuant to section 1203.4 of the California Penal Code. On January 18, 2007, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on his behalf by his a U.S. citizen spouse. During an interview in regard to the Form I-485 the applicant testified that he last entered the United States without inspection in May 2000. On March 19, 2007, the applicant filed the Form I-212, indicating that he continued to reside in the United States. On June 11, 2009, the Form I-485 was denied. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for a period of twenty years. He 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 in the United States with his U.S. citizen spouse and two U.S. citizen children.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The field office director determined that the applicant was not eligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision* dated June 11, 2009.

On appeal, counsel contends that the field office director erred in retroactively applying *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9th Cir. 2007) to the applicant's Form I-212 because the applicant filed the application in reliance on *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). *See Counsel's Brief*, dated July 29, 2009. In support of his contentions, counsel submits only the referenced brief.

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 [Secretary 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.

Accordingly, aliens who have, 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 the law are inadmissible. An exception to the section 212(a)(6)(E) ground of inadmissibility is available to eligible immigrants who only aided their spouse, parent, son, or daughter to enter the United States in violation of the law. A section 212(a)(6)(E) inadmissibility may also be waived under section 212(d) 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 aided, abetted and assisted a family friend through a prearranged agreement to drive the family friend from her home in Mexico, through the San Luis, Arizona port of entry to her sister's home in California. The record clearly reflects that the applicant knowingly encouraged, aided, assisted and abetted a family friend in entering the United States illegally. The AAO, therefore, finds that the applicant is inadmissible under section 212(a)(6)(E) of the Act and is statutorily ineligible for the exception set forth in section 212(a)(6)(E)(ii) of the Act or the waiver available in section 212(d)(11).

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 and which mandatorily bar the applicant from the United States. Therefore, no purpose would be served 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 as a matter of discretion.

ORDER: The appeal is dismissed.