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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

#4

[Redacted]

FILE:

[Redacted]

Office: EL PASO, TX

Date:

MAR 15 2011

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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, El Paso, Texas, 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 December 1, 1990, was admitted to the United States as a lawful permanent resident.

On December 26, 2007, the applicant was apprehended while transporting four aliens away from the Texas border area. On October 14, 2008, the applicant pled guilty to and was convicted of knowingly and in reckless disregard of the fact that the aliens had entered the United States in violation of law, did transport or move or attempt to transport or move the aliens within the United States in furtherance of such violation of law in violation of sections 8 U.S.C. §§ 1324(a)(1)(A)(ii), 1324(a)(1)(B)(ii) and 1324(a)(1)(A)(v)(II). The applicant was sentenced to 54 days in jail or time served. On October 15, 2008, the applicant was placed into immigration proceedings under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(A)(iii), for being convicted of an aggravated felony, specifically under section 101(a)(43)(N) of the Act. On October 30, 2008, the immigration judge ordered the applicant removed from the United States. On November 4, 2008, the applicant was removed from the United States and was returned to Mexico.

On May 5, 2009, the applicant's U.S. citizen adult son filed a Petition for Alien Relative (Form I-130) on behalf of the applicant which was approved on November 5, 2009. On June 6, 2010, the applicant filed the Form I-212 indicating that he resided in Mexico.¹ The applicant is permanently 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 as an aggravated felon 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 reside in the United States with his lawful permanent resident spouse and four U.S. citizen children.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E) and that no waiver or exception is available to him under sections 212(a)(6)(E)(ii) and (iii) of the Act, 8 U.S.C. §§ 1182(a)(6)(E)(ii) and (iii). The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision* dated August 2, 2010.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(E) of the Act; and the applicant was only convicted of unlawful transportation of illegal aliens within the United States. *See Counsel's Brief*, undated. In support of her contentions, counsel submits only the referenced brief.

Section 101(a)(43) of the Act provides, in pertinent part:

The term "aggravated felony" means

¹ The AAO notes that it appears that the applicant has illegally reentered the United States after having been removed since the record contains a receipt in the name of the applicant, dated January 14, 2010, indicating that the applicant was residing in the United States at 125 Dropseen and received services in regard to his car in El Paso, Texas.

....

(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act

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.

While counsel contends that the applicant was only convicted of unlawful transportation of illegal aliens within the United States, a finding of inadmissibility under section 212(a)(6)(E) of the Act does not require a conviction and, as discussed below, the record reflects that the applicant's actions render him inadmissible under section 212(a)(6)(E) of the Act.

The record reflects that the applicant knowingly participated in a prearranged plan to transport undocumented aliens away from the border after their unlawful entry, which constitutes clear and convincing evidence that he knowingly encouraged, aided and abetted such unlawful entry within the meaning of section 212(a)(6)(E) of the Act. *See Hernandez-Guadarrama v. Ashcroft*, 394 F.3d 674 (9th Circuit, 2005) and *Soriano v. Gonzales*, 484 F.3d 318 (5th Circuit, 2007) (knowingly transporting illegal aliens after entry based on prearranged plan constitutes knowing encouragement and assistance of alien's unlawful entry under section 212(a)(6)(E) of the Act). The AAO therefore finds that the applicant is inadmissible pursuant to section 212(a)(6)(E) of the Act. 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 his 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 aliens smuggled by the applicant were not relatives of the applicant. 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 as a matter of discretion.

ORDER: The appeal is dismissed.