



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]

Office: Buffalo

Date:

25 JAN 2002

IN RE: Applicant: [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)

IN BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be granted, and the order dismissing the appeal will be withdrawn.

The applicant is a native of Guyana and citizen of Canada who was found to be inadmissible under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid immigrant visa, reentry permit, border crossing card or other valid entry document. He was removed from the United States following proceedings under section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1). Therefore, the applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. 1182(a)(9)(A)(i). 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), to return to his residence and business in the United States as a nonimmigrant treaty investor.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On motion, counsel provides evidence that the applicant has remained in Canada since his removal, and he is eligible for a nonimmigrant treaty investor (E-2) visa based on a very substantial investment in the United States and the approval of the present application.

Section 212(a)(9)(A) of the Act provides, in part, that

(i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 of the Act initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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) 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 contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

The favorable factors in this matter are the applicant's family ties, his eligibility for an E-2 nonimmigrant visa, his U.S. citizen child, and the absence of a criminal record.

The unfavorable factors in this matter include the applicant's employment without Service authorization, and his lengthy presence in the United States without a lawful admission or parole.

Although the applicant's actions in this matter cannot be condoned, he has now established by supporting evidence that the favorable factors outweigh the unfavorable ones.

In discretionary matters, the applicant bears the full burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). After a careful review of the record, it is concluded that the applicant has established that he warrants the favorable exercise of the Attorney General's discretion. Accordingly, the order dismissing the appeal will be withdrawn and the application will be approved.

ORDER: The order of March 12, 2001, dismissing the appeal is withdrawn. The application is approved.