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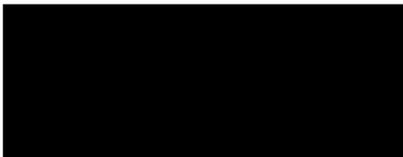
U.S. Department of Justice

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

Office: California Service Center

Date: JAN 29 2000

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)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision 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 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 that 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 that 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 Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States at entry on August 23, 1998, under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and § 1182(a)(7)(A)(i)(I), for having attempted to procure admission into the United States by fraud and as an alien not in possession of a valid visa or lieu document. He was removed from the United States on August 23, 1998, under section 235(b)(1)(A)(i) of the Act, 8 U.S.C. § 1225(b)(1)(A)(i). Therefore, he is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered expeditiously removed from the United States.

The applicant is the beneficiary of an approved Petition for Alien Relative as the unmarried son of a U.S. citizen. 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), to visit his family members, especially his ill father.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, the applicant describes his father's illness and states that he would like to visit his father when he gets sick.

The record reflects that the applicant attempted to procure admission into the United States on August 22, 1998, by presenting a Form I-586 (Border Crossing Card) of another person. The applicant states that he purchased it for \$100.00 in Mexicali.

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

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) Any alien who falsely represents, or has falsely represented himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

Section 212(i) of the Act provides that:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 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) 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 contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Service instructions at O.I. § 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility on Form I-601.

Section 212(a)(6)(B) of the Act, 8 U.S.C. 1182(a)(6)(B), was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and is now codified as section 212(a)(9)(A)(i) and (ii). The provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided. IIRIRA became effective on September 30, 1996.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) established the bar to admissibility and the waiting period as 5 years for aliens who are expeditiously removed under section 235(b)(1)(A)(i) of the Act, (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 reducing and/or stopping aliens from overstaying

their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have violated immigration laws. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See Fiallo v. Bell, 430 U.S. 787 (1977); Reno v. Flores, 507 U.S. 292 (1993); Kleindienst v. Mandel, 408 U.S. 753, 766 (1972). See also Matter of Yeung, 21 I&N Dec. 610, 612 (BIA 1997).

Although guidelines for considering permission to reapply for admission applications were promulgated in Matter of Tin, 14 I&N Dec. 371 (Reg. Comm. 1973), and in Matter of Lee, 17 I&N Dec. 275 (Comm. 1978), these holdings were rendered long before Congress amended the Act from 1981 through the present 1996 IIRIRA amendments and beyond. It is specifically noted that the Commissioner in Matter of Lee, referred to the intent of Congress in enacting former sections 212(a)(16) and (17) of the Act, 8 U.S.C. §§ 1182(a)(16) and (17), in the conclusions and recommendations of the Senate Committee on the Judiciary in their report dated 1950. The Committee also reviewed section 3 of the 1917 Act in their study.

Even though the decisions in Tin and Lee have not been overruled, Congress and the courts following the 1981 amendments and onward have clearly shown in their intent, and in the legislation and in their decisions, that individuals who violate immigration law are viewed unfavorably. The later statutes and judicial decisions have effectively negated most precedent case law rendered prior to 1981. Such case law is still considered but less weight is given to favorable factors gained after the violation of immigration laws following statutory changes and judicial decisions.

It is appropriate to examine the basis of a removal as well as an applicant's general compliance with immigration and other laws. Evidence of serious disregard for law is viewed as an adverse factor. Matter of Lee, 17 I&N Dec. 275 (Comm. 1978). Family ties in the United States are an important consideration in deciding whether a favorable exercise of discretion is warranted. Matter of Acosta, 14 I&N Dec. 361 (D.D. 1973).

The favorable factors in this matter are the family ties, the approved visa petition, and the absence of a criminal record.

The unfavorable factors in this matter include the applicant's attempt to procure admission by fraud, and his being expeditiously removed from the United States.

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.



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

ORDER: The appeal is dismissed.