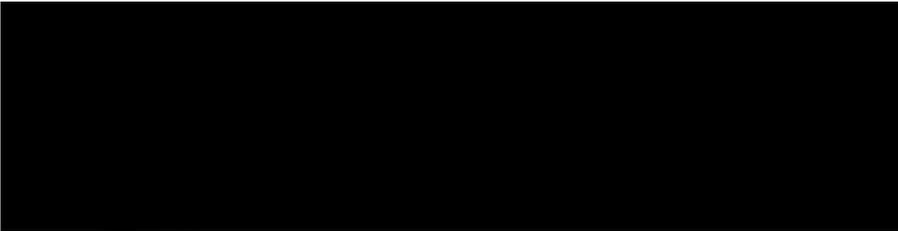
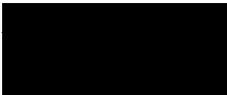




U.S. Citizenship
and Immigration
Services



FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 26 2004

IN RE:

Applicant:



APPLICATION:

Application for Permission to Reapply for Admission after Removal into the United States after Deportation 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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Colombia who was present in the United States without a lawful admission or parole on October 17, 1985. On December 3, 1985, an Immigration Judge found the applicant deportable and granted him voluntary departure until January 20, 1986, in lieu of deportation. The applicant failed to submit documentary evidence that he departed the United States on or prior to January 20, 1986. The record fails to establish that the applicant departed by that date and on March 26, 1986 a Warrant of Deportation was issued. The applicant's failure to prove his departure on or prior to January 20, 1986, changed the voluntary departure order to an order of deportation. The applicant is therefore 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). 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 remain and reside in the United States. The director determined that the applicant is inadmissible pursuant to section 212(a)(9)(B) of the Immigration Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B).

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the application accordingly. *See Director's Decision* dated October 21, 2003.

A review of the documentation in the record of proceeding reveals that an Immigration Judge granted the applicant voluntary departure until January 20, 1986. The applicant failed to surrender for removal or depart from the United States within the allotted time and he is therefore 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).

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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

On appeal the applicant states that he did depart the United States in December of 1985 and that he reentered without inspection in January 1986 and from that date on he has been physically present in the United States. Additionally he states that he now has a U.S. citizen child, born on September 21, 1994, and he submits letters attesting to the fact that he is a person of good moral character.

The applicant presented no proof of his departure in December 1985 and therefore he remains inadmissible.

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 of deportation; the recency of the deportation; the length of legal residence in the U.S.; the applicant's moral character and his respect for law and order; evidence of reformation and rehabilitation; the applicant's family responsibilities; and hardship to if the applicant were not allowed to return to the U.S.

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

[T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

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 be a condonation of the alien's acts and could encourage others to enter without being admitted to work in the United States unlawfully. *Id.*

The AAO finds that the favorable factors in this case are the absence of a criminal record, the applicant's family tie to a U.S. citizen and the favorable recommendations.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States in 1985, his failure to depart the United States after he was granted voluntary departure, his failure to depart after a final removal order was issued, his employment without authorization and his lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee, supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

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 the applicant 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.