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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: NOV 18 2004

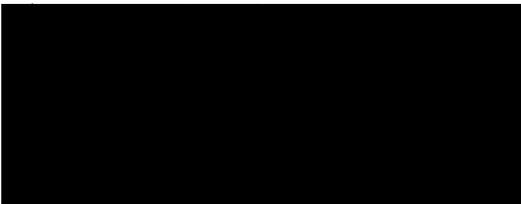
IN RE:

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)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**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, Nebraska Service Center. The matter is now before the AAO on appeal. The appeal will be sustained and the application approved.

The applicant is a native and a citizen of Mexico who entered the United States without a lawful admission or parole on August 14, 1992, at the San Ysidro Port of Entry. On November 11, 1996, the applicant was apprehended at her work site. Form I-213, Record of Deportable Alien, reveals that the applicant had presented a counterfeit alien registration card (I-551) and social security card in on order to obtain employment. On November 6, 1996, the applicant was granted voluntary departure to Mexico at government expense. According to the applicant's own statement she was removed to Mexico on November 17, 1996, and reentered the United States on November 20, 1996, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant is the beneficiary of an approved petition for alien relative filed by her Lawful Permanent Resident (LPR) spouse. She now 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 in the United States and reside with her LPR spouse and three U.S. citizen children.

The Director determined that determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the application accordingly. See *Director's Decision* dated February 4, 2004.

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.

In his decision the Director notes that on the Form I-212 the applicant initially indicated that her date of removal was 1997. The Director further notes that the record contains a birth certificate showing that the applicant was in the United States on May 23 1997, and that if she reentered the United States on or after April 1, 1997, she would be inadmissible under section 212(a)(9)(C)(i)(II) of the Act and not eligible to file an application for permission to reapply until she has been outside the United States for at least 10 years.

Based on the documentation in the record of proceedings and the applicant's affidavits regarding her removal in 1996 and her explanation regarding the date on the Form I-212, the AAO accepts the fact that the applicant was removed from the United States in November 1996, returned on or about November 20, 1996, and therefore she is not subject to section 212(a)(9)(C)(i)(II) of the Act.

On appeal counsel states that the Director failed to consider all the favorable factors in the case. Counsel states that the applicant is a person of good moral character, she is the beneficiary of an approved petition for alien relative, she does not have any criminal history, her three U.S. citizen children would suffer emotional hardship, and that she has been residing in the United States for over 11 years. In addition counsel states that the Director erroneously stated in his decision that the fact that the counterfeit I-551 and social security card were not found implies that the applicant may have continued to use them and that the applicant may have violated other laws at the time of her reentry in the United States on November 20, 1996.

The AAO agrees with the counsel that absent a specific charge and proof it is inappropriate to allege immigration violations against the applicant.

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 include the applicant's family ties in the United States, her spouse and children, the approval of an I-130 relative petition, the absence of any criminal record since entering the United States, the prospect of general hardship to her family and the numerous favorable

recommendations attesting to her good moral character. In addition a favorable factor is the fact that she was granted voluntary departure on November 6, 1996, although it was at government expense because of lack of funds.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, her reentry without permission to reapply after her removal and periods of unlawful presence and unauthorized employment.

While the applicant's entry without inspection in the United States, her subsequent reentry after removal and her illegal employment are serious matters that cannot be condoned, the AAO finds that given all of the circumstances in the present case and the time that has elapsed since her immigration violations, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained and the application approved.