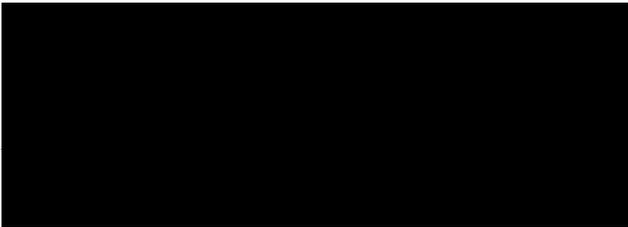




U.S. Citizenship
and Immigration
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124

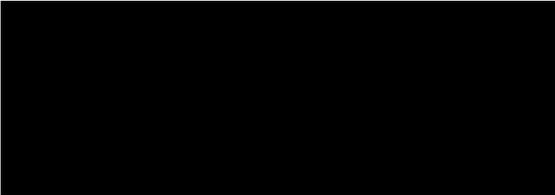


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 03 2004

IN RE: Applicant: [Redacted]

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:



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

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Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant is a native and a citizen of Armenia who entered the United States on January 28, 1993, as a non-immigrant visitor for pleasure. The applicant applied for asylum on October 6, 1993, with the Immigration and Naturalization Service (now known as Citizenship and Immigration Services, (CIS)). On July 20, 1995, the applicant was interviewed for asylum status and he was referred to an Immigration Judge for a court hearing. The record reflects that on April 9, 1996, an Immigration Judge granted the applicant voluntary departure until May 10, 1996. He filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on February 28, 1997, and was granted voluntary departure until March 27, 1997. The applicant failed to surrender for removal or depart from the United States. The applicant appeared at a CIS office on February 25, 1998, and on the same day a Warrant of Deportation was issued. The applicant was placed in custody and he was removed from the United States on March 24, 1998. 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). 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).

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and that the applicant did not provide evidence to show that he resided in Armenia since the date of his removal from the United States. The Director denied the application accordingly. *See Director's Decision* dated April 1, 2004.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(i) Arriving aliens.- 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 five 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.

(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, counsel submits a brief, copies of the applicant's child's birth certificate, marriage certificate, his spouse's naturalization certificate, an affidavit from the applicant and documentation to show that the applicant has resided in Armenia since his removal from the United States. In the brief counsel states that the applicant is the father of a U.S. citizen child who would suffer extreme hardship if the waiver application were denied. In addition counsel states that the applicant is a person of good moral character and does not have any criminal record since his entry into the United States.

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.*

The Director's decision states that the unfavorable factors in the applicant's case include his flagrant disregard of the Immigration Judge's order and illegal residence in the United States which clearly establishes his continued disregard for and abuse of the laws of this country and the lack of any reformation or rehabilitation. In addition the director states that the applicant did not provide sufficient evidence to prove that he has been resided in Armenia since the date of his removal.

The Director concluded that these factors outweighed that the applicant is the spouse and father of U.S. citizens.

The AAO notes that the applicant filed a non-frivolous asylum application and although it was subsequently denied he was entitled to exhaust all means available to him by law in an effort to legalize his status in the United States. His various applications and appeals conferred on him a status that allowed him to remain in the United States while they were pending. The AAO finds that the applicant remained in the United States without authorization from March 29, 1997, the date his voluntary departure order, granted by the BIA, expired until March 24, 1998, the date he was removed from the United States.

In his decision the Director indicates only one favorable factor for the applicant, the fact that he is the spouse and father of United States citizens. The AAO finds that the Director failed to consider the other favorable factors including the existence of an approved petition for alien relative, the absence of any criminal record since entering the United States and the potential of general hardship to his family. In addition based on the documentation submitted the AAO finds that the applicant has proven that he has been residing in Armenia since the date of his removal from the United States.

The AAO finds that the unfavorable factor in this case includes the applicant's failure to depart the country after he was granted voluntary departure.

While the applicant's failure to depart the United States after being granted voluntary departure cannot be condoned, the AAO finds that given all of the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted.

ORDER: The appeal of the denial of the Form I-212 is sustained and the application approved.