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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [Redacted]

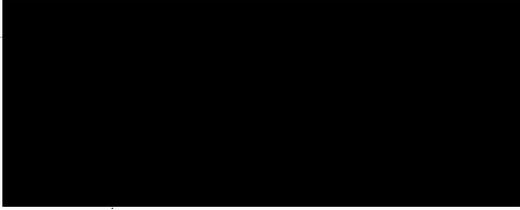
Office: VERMONT SERVICE CENTER

Date: SEP 15 2007

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)

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

**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 the Dominican Republic who entered the United States on April 29, 1991, in possession of a valid B-2 nonimmigrant visa. The applicant remained longer than authorized and on October 29, 1997, an Immigration Judge ordered the applicant excluded and deported from the United States. The applicant failed to surrender for removal or depart from the United States and is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 with her spouse and adult children.

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 January 13, 2004. A previously submitted Form I-212 was denied on December 15, 2000, by the Director, Vermont Service Center, and a subsequent appeal was dismissed by the AAO on August 29, 2001.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens 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 . . . [and who 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 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 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.

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) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (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.

On appeal counsel states that the Director erred in denying the application and did not take into account the evidence the applicant presented in connection with her application, such as letters regarding her good moral

character, the fact that she is married to a lawful permanent resident (now U.S. citizen) and is the mother of three children, and that more than six years have elapsed since the order of exclusion. Counsel asserts that the applicant is not inadmissible or barred from adjusting her status to that of a lawful permanent resident and he refers to 8 C.F.R. § 212.2 and 22 C.F.R. § 40.91(a). In addition counsel states that the applicant did not appeal the order of exclusion because her lawyer did not fully advise her of her appeal rights.

Counsel's assertions are not persuasive. 8 C.F.R. § 212.2 states in pertinent part that any alien who has been deported or removed from the United States and is applying for a visa, admission to the United States, or adjustment of status, must present proof that he or she has remained outside of the United States for the time period required for re-entry after deportation or removal. 22 C.F.R. § 40.91(a) refers to an alien who has been found inadmissible, whether as a result of a summary determination of inadmissibility at the port of entry under section 235(b)(1) of the Act or of a finding of inadmissibility resulting from proceedings under section 240 of the Act initiated upon the alien's arrival in the United States, shall be ineligible for a visa under INA 212(a)(9)(A)(i) for 5 years following such alien's first removal from the United States.

In the present case the applicant has not remained outside the United States for the time period required for re-entry without filing a Form I-212. In addition, the applicant was not found inadmissible under section 235(b)(1) of the Act nor did her inadmissibility result from proceedings under section 240 of the Act initiated upon her arrival in the United States. Except for one statement from counsel regarding the applicant's previous attorney not advising the applicant about an appeal, no documentary evidence was provided to substantiate this claim. The AAO finds that the Director took into account all documentation submitted before issuing a decision.

The record reflects that the applicant has three adult children residing in the United States and a U.S. citizen spouse. The applicant's children have previously provided affidavits stating that the applicant is needed in order to take care of her grandchildren and that they would suffer emotional stress if the application is not authorized. In addition, the applicant and her spouse have provided affidavits stating that she is needed in the United States so her children may go to the university while she would take care of her grandchildren.

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 the applicant's family 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 applicant's family ties to U.S. citizens and LPR's (spouse and children), the prospect of general hardship to the family and the absence of a criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's overstay of her authorized stay, her failure to depart the United States after a deportation order was issued by an Immigration Judge, her employment without authorization and her 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.