



U.S. Citizenship
and Immigration
Services

124

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

SEP 29 2004

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:

[REDACTED]

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, Vermont 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 citizen of Germany who entered the United States on June 10, 2000, as a non-immigrant visitor under the Visa Waiver Pilot Program (VWPP). The applicant overstayed her authorized period of stay and on November 2, 2000, she was found deportable under section 237(a)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(1)(B) for having remained in the United States longer than permitted. On November 3, 2000, she was removed to Germany pursuant to section 235(b)(1) of the Act. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). 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 travel to the United States to visit her U.S. citizen sister.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated May 14, 2003.

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.

....

(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 aliens' 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 submits a brief, affidavits from the applicant and her sister, and medical documentation regarding the applicant's sister. In the brief counsel does not dispute the fact that the applicant overstayed her authorized period of stay. Counsel states that the applicant stayed longer than authorized because her U.S. citizen sister was in need of her help due to a medical emergency. In the brief and in the affidavits it is stated

that on November 2, 2000, the applicant appeared voluntarily before the Immigration and Naturalization Service (now Citizenship and Immigration Services) in order to apply for an extension. The applicant was placed in expedited removal and was told to depart the next day, which was verified by an Immigration Officer. Counsel further states that the applicant is a widower, receives a pension from the German Government and that her sister and brother-in-law will provide for her room, food, and transportation expenses if she is allowed to visit 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 are her overstay of her authorized period of stay and the fact that she had not established that she can support herself if she were to re-enter the United States. The Director concluded these factors outweighed the fact that the applicant voluntarily presented herself to the Immigration office in Puerto Rico and left voluntarily.

The AAO finds that the favorable factors in this case include the fact that the applicant no criminal history, has family ties in the United States, her sister and brother-in-law, her willingness to follow immigration law and regulations in order to be able to return to the United States and has provided documentation to show that she will not become a public charge during her stay in the United States.

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. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.