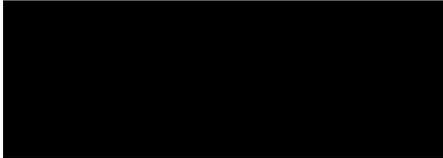


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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

AUG 05 2005

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:

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

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, California Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who entered the United States on or about December 29, 1987, without a lawful admission or parole. The record reflects that the applicant was convicted on June 25, 1990, for theft and on February 24, 1993, for the offense of possession of a firearm. The record further reveals that on August 5, 1992, the applicant was admitted into the United States as a lawful permanent resident in possession of an immigrant visa. On April 27, 1993, the applicant was deported from the United States based on his criminal convictions. The record reflects that the applicant reentered the United States on an unknown date without a lawful admission or parole and without permission to reapply for admission in violation of section 276 Immigration and Nationality Act (the Act), 8 U.S.C. § 1326. The applicant was apprehended after his illegal reentry and on September 6, 1996, he was deported to El Salvador. On July 31, 1998, the applicant applied for admission to the United States as a Transit Without Visa (TWOV) passenger en route to France. The applicant was found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act as an individual who has been convicted of a crime involving moral turpitude and on August 29, 1998, he was removed from the United States. The applicant is 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 travel to the United States and reside with his U.S. citizen mother.

The Director determined that the applicant was inadmissible to the United States under section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for a period of one year or more. In addition the Director determined that section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5) applied in this matter and the applicant is not eligible for any relief or benefit from his application. The Director denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *See Director's Decision* dated October 20, 2004.

The proceeding in the present case is for an application for permission to reapply for admission into the United States after deportation or removal and therefore the AAO will not discuss the applicant's potential grounds of inadmissibility under section 212(a)(9)(B) of the Act. If the applicant is found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, he may be eligible to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The proceeding in the present case is limited to the issue of whether or not the applicant meets the requirements necessary for the ground of inadmissibility under section 212(a)(9)(A)(ii) of the Act, to be waived.

Section 241(a) detention, release, and removal or aliens ordered removed.-

(5) reinstatement of removal orders against aliens illegally reentering.- if the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The AAO finds the Director erred in finding that section 241(a)(5) of the Act applies in this case. The record of proceedings does not reflect that the applicant re-entered the United States after his removal on August 29, 1998. The applicant states that he resides in Mexico and there is no documentary evidence to show otherwise. Although the applicant is not subject to section 212(a)(5) of the Act, he is clearly inadmissible under section 212(a)(9)(A) of the Act and therefore must receive permission to reapply for admission.

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 aliens' reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (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, with limited exceptions, 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 the applicant's mother requests that the Form I-212 be granted and submits a letter from the applicant. In his letter the applicant does not dispute the fact that he has been convicted of crimes involving moral turpitude or that he has been deported several times, but requests that he be given an opportunity to return to the United States and states that his life has been changed since he was ". . . touched by the Hand of God through His Son Jesus Christ." In addition the applicant states that he has an elderly mother who is very ill and he would like to spend the last days of her life with her. Furthermore the applicant states that he has a U.S. citizen child, although he does not submit any proof of this. The applicant states that he dreams that he will be able to study and become a lawyer and he would like to work helping children and youth, preventing them from getting into drugs and alcohol and guiding them to a greater future with a vision and a mission in life.

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 for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

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 had abided 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.*

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 favorable factor in this matter is the applicant's family tie to a U.S. citizen, his mother.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States in 1987, his conviction of a crime involving moral turpitude, his illegal reentry subsequent to his April 27, 1993, deportation, his attempt to reenter after his second deportation on September 6, 1996, and his employment without authorization.

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.