



U.S. Citizenship
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H4

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: AUG 30 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after 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 Honduras who entered the United States without a lawful admission or parole on or about July 16, 1992. The applicant was a dependent on an asylum application filed by her mother on January 6, 1993, with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). Her mother's application was referred to an Immigration Judge and an Order to Show Cause and Notice of Hearing was issued on March 28, 1994. The record reflects that on July 12, 1994, an Immigration Judge granted the applicant voluntary departure in lieu of deportation until October 12, 1994. The applicant failed to surrender for removal or depart from the United States. The applicant's failure to depart on or prior to October 12, 1994, changed the voluntary departure order to an order of deportation. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant applied for and received Temporary Protective Status (TPS), and was issued employment authorization cards. 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.

The Director determined that the applicant does not have any application or petition filed on her behalf pending with CIS. The Director denied the application accordingly. *See District Director Decision* dated November 4, 2004.

Although the applicant does not have an application or a petition filed with CIS she is eligible to file a Form I-212 pursuant to the regulation at 8 C.F.R. § 212.2(g)(1) which states in pertinent part:

(g) Other applicants.

(1) Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section must file Form I-212.

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 alien's reembarkation at a place outside the

United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's 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, counsel submits a brief, a declaration from the applicant, the applicant's school transcripts, a certificate of appreciation and a copy of employee of the moth certificate. In his brief counsel states that the applicant's entry without inspection, remaining in the United States and not leaving after an Immigration Judge granted her voluntary departure does not show a callous attitude toward violating the immigration laws, because she was a minor. In addition counsel states that the deportation order was issued more that 10 years ago, and the applicant has lived in the United States since 1992, establishing social connections. Furthermore he states that the applicant is attending a University and is expected to graduate in 2006. In her declaration the applicant states that she has never been arrested in the United States or anywhere else in the world, she applied for and was approved for TPS, she has been working since 1999 and if she is forced to return to Honduras she will not be able to complete her education and go to Law School. In addition she states that all her friends are in the United States.

On appeal, both counsel and the applicant failed to present documentary evidence to show that the applicant is a beneficiary of an approved visa petition or that she has any other means of obtaining lawful permanent residence status in 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 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 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 condone the alien's acts and could encourage others to enter the United States 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.*

As noted above the applicant was a dependent on her mother's asylum application and a minor when an Immigration Judge granted her voluntary departure. The applicant applied for and was approved for TPS and was issued employment authorization documents. Her various applications conferred on her a status that allowed her to remain in the United States while they were pending and does not show a callous attitude toward the immigration laws.

The AAO finds that the favorable factors in this case include the fact that the applicant has no criminal record since entering the United States and has complied with immigration laws by applying for TPS and employment authorization.

The applicant cannot be held accountable for her illegal entry into the United States in 1992 and her failure to depart the country after she was granted voluntary departure because at the time she was a minor.

Based on the above the AAO finds that given all of the circumstances of the present case, the applicant has established 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.