

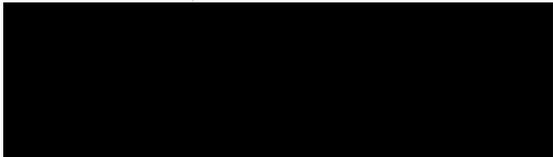
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U.S. Citizenship
and Immigration
Services

H4



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: SEP 28 2005

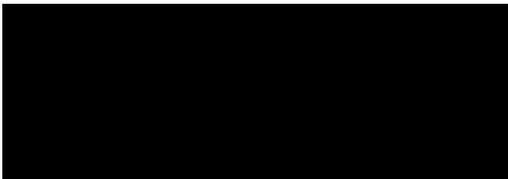
IN RE:

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:



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 into the United States after Deportation or Removal (Form I-212) was denied by the Director, California 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 Mexico who was admitted into the United States on January 15, 1972, by presenting an immigrant visa that he had obtained as an impostor. On November 25, 1998, the applicant was served with a Notice to Appear for a removal hearing before an Immigration Judge. On October 18, 2002, an Immigration Judge ordered the applicant removed from the United States pursuant to section 237(a)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(1)(A), that states that any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable. Consequently, the applicant was removed from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen son. The applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i) for having procured a visa and admission into the United States by fraud and section 212(a)(9)(A)(ii) of 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 Lawful Permanent Resident (LPR) spouse and U.S. citizen children.

The Director determined that the applicant was inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), of the Act for having been unlawfully present in the United States after previous immigration violations and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. In addition the Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. *See Director's Decision* dated November 4, 2004.

On appeal, counsel and the applicant's spouse state that the applicant resides in Mexico. Counsel submits a copy of a driving license, a copy of a voter's registration card and copies of electrical and water bills under the name of the applicant's alleged landlord in Mexico.

The driver's license was issued on February 8, 2001, prior to the applicant's removal and does not support counsel's assertion that the applicant resides in Mexico. The same can be said regarding the copies of the electrical and water bills submitted, since the applicant's name does not appear on the bills and counsel did not submit a copy of the applicant's lease agreement. Although it is unclear from the record of proceeding if the applicant reentered the United States after his October 18, 2002 removal, 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). Aliens previously removed.-

(A) Certain alien 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, 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 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 continuous territory, the Attorney General 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 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 Form I-212 because the applicant has a LPR spouse and three U.S. citizen children, and does not have an extensive immigration record. Additionally counsel states that the applicant has been residing in Mexico since his removal. Counsel does not dispute the fact that the applicant had been residing in the United States for many years in violation of law but states that he is trying to legalize his status in the United States and therefore the Form I-212 should be granted.

The record of proceedings reveals that on July 13, 1999, in the Superior Court of the State of Arizona in and for the County of Yuma, the applicant was convicted of the offense of making a false statement to obtain unemployment insurance, a class 6 felony. The AAO notes that based on the applicant's conviction he might be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

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.*

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his LPR spouse and U.S. citizen children, and the approval of a Form I-130.

The unfavorable factors in this matter include the applicant's entry into the United States by fraud, his criminal conviction and his lengthy presence in the United States in violation of law.

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.