



U.S. Citizenship  
and Immigration  
Services

identifying data deleted  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



H4

FILE:



Office: CALIFORNIA SERVICE CENTER

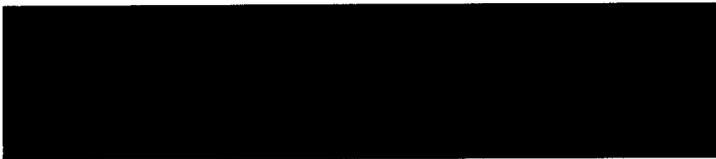
Date: SEP 30 2005

IN RE:



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 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 a citizen of India who was admitted into the United States on September 5, 1996 as a visitor for pleasure, with authorization to remain in the United States until March 4, 1997. The applicant filed an affirmative asylum application on October 21, 1996. The San Francisco Asylum Office issued the applicant a Notice to Appear (NTA) and referred the asylum application to the Executive Office for Immigration Review (Immigration Court) on December 11, 1996. On October 24, 2000, an immigration judge (IJ) denied the applicant's requests for asylum, withholding of deportation, relief under the Convention Against Torture, and voluntary departure. The IJ ordered the applicant removed from the United States. The applicant appealed the IJ denial to the Board of Immigration Appeals (BIA), which affirmed the IJ denial on May 10, 2002. The applicant appealed the BIA decision to the United States Court of Appeals for the Ninth Circuit, which denied the applicant's petition for review. *Malhi v. INS*, 336 F.3d 989 (9<sup>th</sup> Cir. 2003). The applicant filed an I-212 Application for Permission to Reapply for Admission Into the United States After Deportation or Removal on August 19, 2003.

The applicant married [REDACTED] a United States citizen, on January 3, 1998. [REDACTED] filed an I-130 Petition for Alien Relative with the applicant as beneficiary, which the United States Immigration and Naturalization Service (the Service) approved on July 6, 1998. The Service revoked the applicant's I-130 on October 19, 2000, because the applicant was in removal proceedings at the time the I-130 was filed. On May 17, 2001 the applicant [REDACTED] divorced. On November 2, 2001 the applicant married [REDACTED] a United States citizen. On November 30, 2001 [REDACTED] filed an I-130 with the applicant as beneficiary, and the applicant filed an I-485 Application to Register Permanent Resident or Adjust Status. The Service has not adjudicated the I-130 or the I-485.

The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 with his wife.

The director concluded that the evidence submitted with the I-212, as well as Service records, did not warrant a favorable exercise of discretion because of an insufficient amount of positive factors. The director denied the applicant's I-212 accordingly. Decision of the Director, California Service Center, dated April 27, 2004.

Counsel filed a motion to reconsider the director's decision, and in the alternative, an appeal of the decision. In support of the motion, counsel submitted copies of his wife's birth certificate, social security card, and California identification card; a copy of the divorce decree dissolving the applicant's first marriage; a copy of the applicant's marriage certificate; letters from two uncles in India regarding the applicant's political activity in India; a copy of the applicant's passport, visa and I-94; letters from law enforcement agencies regarding the applicant's lack of a criminal record; a copy of a letter regarding the applicant's inability to obtain his birth certificate from India; and various financial documents. In support of the appeal, counsel submitted a letter dated May 28, 2004 in which he stated that he would submit a brief to the AAO in sixty days. The AAO has not received a brief or any additional materials.

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 aliens 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 [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

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 unlawfully. *Id.*

The favorable factors in this matter are as follows: the applicant is married to a United States citizen and has not been convicted of any crimes in the United States.

The AAO finds that the unfavorable factors are as follows: on July 18, 2003 the Ninth Circuit Court of Appeals denied the applicant's petition for review, but the applicant failed to present himself for deportation; the record indicates that since entering the United States, the applicant has used three different identities [REDACTED] to procure immigration benefits; the applicant's asylum claim was denied because the applicant was found not credible. The Board of Immigration Appeals and the Ninth Circuit Court of Appeals upheld the denial on the same grounds.

The AAO concludes that 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 he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has not established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.