

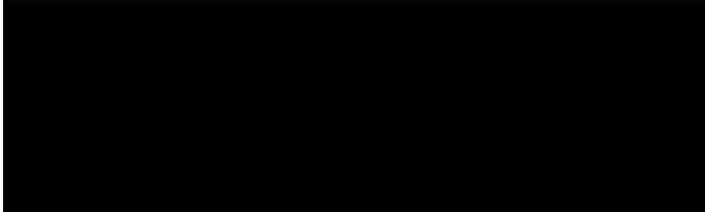
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

Hy

**PUBLIC COPY**



FILE:



Office: SAN ANTONIO, TEXAS

Date: APR 07 2006

IN RE:

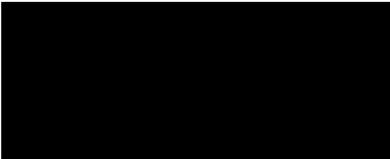
Applicant:



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 District Director, San Antonio, Texas, 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, on July 2, 2000, at the Gateway to the Americas, Laredo, Texas, Port of Entry (POE), orally represented herself to be a citizen of the United States in order to gain admission into the United States. The applicant was found to be inadmissible and was expeditiously removed from the United States pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225(b)(1). The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and 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 as a nonimmigrant visitor.

The District Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely represents herself to be a citizen of the United States for any purpose or benefit under this Act. The District Director then denied the Form I-212 accordingly. *See District Director's Decision* dated August 3, 2004.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

On appeal, counsel states that the applicant was in a vehicle with friends who decided to visit the United States, at which time she told them that she did not have any legal documentation to enter the United States, but, she was unable to exit the vehicle. According to counsel, at the POE the applicant stated that she had no documentation to enter the United States and that she was from Mexico. In addition, counsel states that at no time did the applicant mention she was a U.S. citizen. Counsel further states that during her interview the applicant stated that she worked at a bar but was never asked in what capacity she worked there. The applicant never mentioned that she worked as a prostitute and her employment at the bar was that of a "check girl." Finally, counsel requests that the Form I-212 be granted since the decision was based on inaccurate reports and assumptions.

Counsel's statements are not persuasive. On July 2, 2000, the applicant was interviewed with regard to her attempt to procure admission into the United States. The interview was conducted in the Spanish language and during the interview the applicant admitted that she attempted to gain admission into the United States by representing herself to be a U.S. citizen. The applicant stated that her friend, the driver of the vehicle, told her to say that she was from Houston. A false representation of U.S. citizenship may be either an oral representation or one supported by an authentic or fraudulent document. In the present case, the applicant made an oral representation of U.S. citizenship in order to gain admission into the United States. Therefore, the applicant is clearly inadmissible under section 212(a)(6)(C)(ii) of the Act.

The AAO finds that the Director erred in stating that the applicant is not eligible for any exception under the Act. The applicant in the present case filed a Form I-212 in order to be eligible to apply for a non-immigrant visa. If the applicant's Form I-212 were to be granted she would be eligible to file a waiver of her ground of inadmissibility pursuant to section 212(d)(3) of the Act. The Form I-212 must be adjudicated pursuant to section 212(a)(9)(A)(iii) of the Act and the discretionary factors must be considered.

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.

*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 absence of any criminal record.

The unfavorable factor in this case is the applicant's disregard for the immigration laws of the United States. The applicant attempted to gain admission into the United States by falsely representing herself to be a citizen of the United States, and in 1985 she overstayed her lawful admission.

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 she 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.