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U.S. Citizenship  
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **APR 13 2006**

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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Peru who was admitted into the United States on April 12, 2001 as a B2 visitor with an authorized stay of six months. The applicant, then only 17 years old, overstayed his period of authorized stay for eight months, departing the United States on June 15, 2002. While in Peru the applicant's father, a legal permanent resident residing in the United States, arranged for his son to have a backdated departure stamp put in his passport as to conceal the applicant's overstay in the United States. The applicant, whose entire family was now residing in the United States, appeared for an immigrant visa interview at the U.S. Embassy in Lima, Peru. The applicant then used the backdated stamp to obtain an approved immigrant visa packet. On August 21, 2002 the applicant attempted to enter the United States with his immigrant visa packet when the backdated stamp was discovered. He was removed to Peru the very same day. The applicant 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 travel to the United States and reside with his legal permanent resident father, mother and sister.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(2)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(I), for having been previously removed from the United States and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director denied the applicant's Form I-212 accordingly. *See Director's Decision* dated August 3, 2004.

On appeal, counsel asserts that the favorable factors outweigh the unfavorable factors in the applicant's case and he submits a statement from the applicant's father and a statement from a social worker to support this claim.

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.

*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 unfavorable factors in this case include the applicant's unauthorized eight-month stay in the United States, his use of fraud and misrepresentation to obtain an immigrant visa and his removal from the United States on August 21, 2002.

The favorable factors in this case are the applicant's family ties to his legal permanent resident father, mother, and sister; the approval of an immigrant visa petition; the absence of any criminal convictions and the various mitigating factors surrounding the applicant's immigration violations. The applicant's actions in this matter cannot be condoned, but the circumstances surrounding his immigration violations must be considered when weighing the positive and negative factors in this case. For six out of the eight months the applicant overstayed his visitor's visa, he was a minor. When he returned to Peru his family had already immigrated to the United States. In the applicant's sworn statement taken during his removal proceedings he states that his father arranged for him to have the backdated stamp put in his passport. In addition, when the Immigration Officer asked the applicant about his previous stay in the United States, his father initially answered for him stating that his son had been in the United States for one month. The son then also answered that he had been in the United States for only one month, but after being asked a second time the applicant told the truth. The applicant was 18 years old at the time of this interview and was clearly influenced by his father. Taking these factors into consideration along with the fact that the applicant has no criminal record and his entire family resides in the United States, the favorable factors in the applicant's case outweigh the unfavorable ones.

The AAO notes that although the applicant qualifies for permission to reapply for admission he will also need to apply for a waiver of inadmissibility for his use of fraud when attempting to enter the United States.

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 established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.