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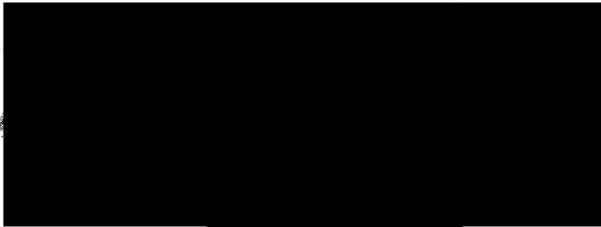
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

AUG 15 2006

IN RE:

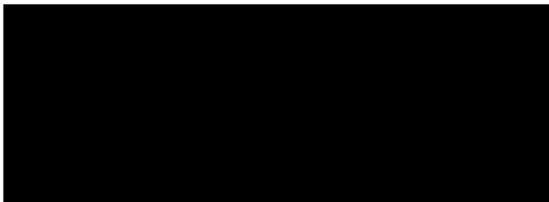
Applicant:



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, Chief  
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 sustained and the application approved.

The applicant is a native and citizen of the Philippines who was admitted into the United States as a non-immigrant visitor for pleasure on May 24, 1991, with an authorized period of stay until November 23, 1991. On October 16, 1992, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589) with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). On January 12, 1993, the applicant was interviewed for asylum status. On December 30, 1993, her application was referred to the immigration court and an Order to Show Cause (OSC) for a hearing before an immigration judge was served on her. On May 14, 1996, an immigration judge found the applicant removable pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act), for having remained in the United States longer than permitted, and granted her voluntary departure until July 30, 1996, in lieu of deportation. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on July 30, 1997, and she was permitted to depart from the United States voluntarily within 30 days of the date of the BIA's order. On December 16, 1998, a petition for review of the BIA's order, filed with the United States Court of Appeals for the Ninth Circuit, was denied. The Ninth Circuit Court of Appeals issued a mandate on February 25, 1999. The applicant's period of voluntary departure granted by the BIA ran anew from the date of the Ninth Circuit Court of Appeals mandate, i.e. 30 days from February 25, 1999. The applicant failed to surrender for removal or depart from the United States on or before March 27, 1999. The applicant's failure to depart the United States on or before March 27, 1999, changed the voluntary departure order to an order of deportation. On March 28, 1999, a Warrant of Removal/Deportation (Form I-205) was issued. On April 29, 1999, the applicant appeared at a CIS office after she received a Notice to Deportable Alien (Form I-166). On April 30, 1999, a petition for stay of deportation was denied, and 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 her U.S. citizen spouse. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 United States and reside with her U.S. citizen spouse and Lawful Permanent Resident (LPR) children.

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 June 1, 2005.

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, 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 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 in others; (2) has added a bar to admissibility for aliens who are unlawfully present in the United States; (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 in which he states that the applicant never "disregarded the laws of this country," and her only violation of law was remaining in the United States beyond her authorized period of stay. In addition, counsel states that the applicant resided in the United States for eight years, first under her B-2 nonimmigrant visa and later in lawful status pursuant to her asylum application. She was gainfully employed and paid taxes. Counsel refers to section 212(a)(9)(B)(v) of the Act and states that the applicant's U.S. citizen spouse and children will suffer extreme financial and mental hardship if the applicant is not permitted to enter the United States. Counsel further states that the applicant does not have any relatives or close friends in the Philippines and she is extremely close to her spouse and children who reside in the United States. The very high cost of airfare between the United States and the Philippines would make travel rare and expensive, and because of high unemployment in the Philippines, the applicant will not be able to secure a job. Additionally, counsel states that the applicant's spouse suffers from diabetes, needs ongoing treatment which he would not be able to afford in the Philippines, and he will lose his life insurance and pension if he decides to relocate with the applicant. Furthermore, counsel states that while in the United States the applicant was an active member of the community, her children are college students pursuing their studies in the United States and the applicant owns a home in the United States. Finally, counsel states that the applicant has demonstrated that her application merits a favorable consideration and requests that the Form I-212 be granted.

The proceedings in the present case are for permission to reapply for admission into the United States after deportation or removal pursuant to section 212(a)(9)(A)(iii) of the Act. Unlike section 212(a)(9)(B)(v) of the Act, section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant seeking permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's spouse and children, but it will be just one of the determining factors.

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 AAO finds that the denial of the applicant's asylum application, the subsequent dismissal of her appeal and the denial of a petition for review of the appeal, are not unfavorable factors as noted in the Director's decision. Any alien has the right to file a non-frivolous asylum application. The AAO further finds that the applicant was entitled to exhaust all means available to her by law and, therefore, applying for benefits under the Act in an effort to legalize her status in the United States is not an unfavorable factor. Her various applications and appeals conferred on her a status that allowed her to remain in the United States while they were pending.

The AAO finds that the Director failed to consider the other favorable factors, the approval of a Form I-130, the filing of income tax, the absence of any criminal record, and the potential of general hardship to her family. In addition, a search of the electronic database of CIS reflects that the applicant was issued Employment Authorization Cards (EAD) since June 26, 1994.

The AAO finds that the unfavorable factors in this case include the applicant's overstay after her initial lawful admission and periods of unauthorized presence and employment.

While the applicant's actions cannot be condoned, the AAO finds that given all of the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

**ORDER:** The appeal of the denial of the Form I-212 is sustained and the application approved.