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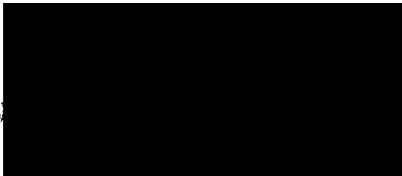


H4

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 25 2006**
IN RE: Applicant: JOSE GILBERTO SORTO-ESCOBAR

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.

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

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, Vermont 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 El Salvador who entered the United States without a lawful admission or parole on October 6, 1994. The applicant was apprehended by the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) on the same date. On October 7, 1994, the applicant was served with an Order to Show Cause (OSC) for a deportation hearing before an immigration judge. The applicant was released on a \$1,500 bond. On April 28, 2000, the applicant failed to appear for a deportation hearing and he was subsequently ordered deported in absentia by an immigration judge pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act), for having entered the United States without inspection. On April 26, 1995, a Warrant of Deportation (Form I-205) was issued and a Notice to Deportable Alien (Form I-166) was forwarded to the applicant. The applicant failed to surrender for removal or depart from the United States. The applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). He is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant 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 and reside in the United States.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones and denied the Form I-212 accordingly. *See Director's Decision* dated July 18, 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 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 submits a brief in which he states that the applicant's illegal entry occurred more than nine years ago and that this is the only negative factor in the applicant's case. Counsel states that because the State Department will not issue visas to poor young men from El Salvador, the applicant was forced to enter the United States illegally. In addition, counsel states that the applicant's initial application in the United States was for political asylum based on a civil war in his country that was financed and supported by the United States government. In his brief, counsel attempts to analyze the asylum laws of the United States and the United States involvement in civil wars in Central and South America. Counsel continues to give an historic view of the immigration laws and states that the applicant was not eligible to file for the original Temporary Protected Status (TPS) under the 1990 Act, because he did not enter prior to 1991, and "he had the bad luck of being placed under deportation proceedings and deported on April 6, 1995." In addition, counsel states that the applicant applied for asylum to no avail, because "the asylum laws were not designed to benefit him, but rather were designed to deport him." Counsel further states that the applicant reentered the United States in order to reunite with his lawful permanent resident spouse and U.S. citizen children. Additionally, counsel refers to a July 13, 2005, decision, in which it is stated: "Further, there is no waiver of such inadmissibility except for battered women and children." Counsel further states that this is erroneous as a matter of law since there is a waiver under section 212(s)(9)(C) of the Act. Finally, counsel states that the applicant has always been employed, paid taxes, and is of good moral character. Counsel requests that favorable discretion be exercised and the application granted.

Counsel's assertions are not persuasive. There is no indication in the record of proceedings that the applicant applied for asylum after his entry into the United States or after he was ordered deported from the United States. In addition, the record of proceedings does not reflect that the applicant was actually removed from the United States after he was ordered deported in absentia. Furthermore, the record reflects that the applicant is single and there is no indication that he has any children. Finally, there is no section 212(s)(9)(C) of the Act, and if counsel intended to cite 212(a)(9)(C) of the Act, this particular section was never mentioned in the Director's decision of July 18, 2005.

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.*

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 approved Form I-140 and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial illegal entry into the United States, his failure to appear for deportation proceedings, the breach of his immigration bond due to his failure to depart the United States after a final deportation order was issued, his periods of unauthorized employment and his lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee, supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

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.