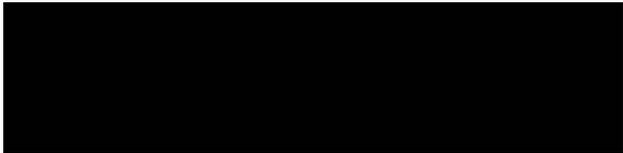


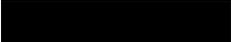


U.S. Citizenship  
and Immigration  
Services

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prevent clearly  
invasion of personal privacy  
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FILE: 

Office: CALIFORNIA SERVICE CENTER

Date: **APR 10 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: SELF-REPRESENTED

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*

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 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 Mexico who entered the United States without a lawful admission or parole on or about December 1, 1984. On April 24, 2000, a Notice to Appear (NTA) for a removal hearing before an immigration judge was issued. On April 2, 2001, an immigration judge found the applicant removable pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(A)(i) for having been present in the United States without being admitted or paroled, and granted him voluntary departure until June 1, 2001. The applicant filed an appeal with the Board of Immigration Appeals (BIA). The BIA affirmed the immigration judge's decision and granted the applicant thirty days to depart the United States voluntarily. The applicant filed a petition for review of an immigration appeal and a request for stay of deportation with the United States Court of Appeals for the Ninth Circuit. His request for stay of deportation was granted until a decision was made by the Ninth Circuit Court of Appeals on his petition for review of an immigration appeal. On March 16, 2004 the petition for review of an immigration appeal was dismissed. On July 22, 2004, agents of Immigration and Customs Enforcement (ICE) apprehended the applicant and consequently, he was removed to Mexico. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 reenter the United States.

The Director determined that the applicant does not have any application or petition filed on his behalf pending with Citizenship and Immigration Services (CIS) and that the unfavorable factors in the applicant's case outweighed the favorable ones. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated December 20, 2004.

Although the applicant does not have an application or a petition filed with CIS he is eligible to file a Form I-212 pursuant to the regulation at 8 C.F.R. § 212.2(g)(1) which states in pertinent part:

(g) Other applicants.

(1) Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section must file Form I-212.

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-

(1) 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 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, with limited exceptions, 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, the applicant states that he never received a decision from the Ninth Circuit Court of Appeals. In addition, the applicant states that during his presence in the United States he always respected the law, he had never been arrested or detained prior to his removal and he is a responsible human being who has always provided for his family. The applicant further states that his services as a physical therapist are greatly needed in the United States. The applicant submits letters from employers attesting to his character and the need of his services in the United States.

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 Director's decision states that the applicant has not established that there are sufficient favorable factors in this case and the applicant has shown disregard for and abuse of the laws of this country.

The AAO does not find that the applicant has shown a continued disregard for and abuse of the laws of the United States. The record of proceedings reveals that on September 17, 1987, he filed an application for temporary resident status as a Special Agricultural Worker (SAW). On December 1, 1997, he withdrew an appeal regarding his SAW application. As noted above an NTA was issued on April 24, 2000. The applicant filed an appeal and he was entitled to exhaust all means available to him by law in an effort to legalize his status in the United States. His various applications and appeals conferred on him a status that allowed him to remain in the United States while they were pending. The Ninth Circuit Court of Appeals made a final decision on his case on March 16, 2004, and the applicant was removed from the United States on July 22, 2004.

The AAO finds that the favorable factors in this case include the fact that the applicant has no criminal record since entering the United States, has complied with immigration laws by applying for SAW status and employment authorization, has filed tax returns, as required by law, and has presented favorable recommendations from employers.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his failure to depart, and periods of unauthorized presence and employment.

While the applicant's entry without inspection in the United States and his subsequent failure to depart the United States after the Ninth Circuit Court of Appeal dismissed his petition for review of an immigration appeal 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 is sustained and the application approved.