



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **APR 11 2006**

IN RE:

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it 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, in July 1974, entered the United States without inspection. On January 12, 1980, the applicant's U.S. citizen daughter was born. On February 2, 1998, the applicant filed an Application for Asylum and Withholding of Removal (Form I-589). On December 2, 1998, the asylum office referred the applicant's asylum application to an immigration judge. On December 23, 2000, the immigration judge granted the applicant voluntary departure until December 22, 2000. The applicant failed to depart the United States and filed an appeal with the Board of Immigration Appeals on November 14, 2000. On May 7, 2001, the applicant's U.S. citizen daughter filed an I-130 Petition for Alien Relative (Form I-130) on his behalf. On October 3, 2002, the Board of Immigration Appeals affirmed the immigration judge's order, granting the applicant voluntary departure until November 3, 2002. The applicant failed to depart the United States and an order of removal was issued on April 16, 2004. On April 16, 2004 a warrant of removal was issued. The applicant failed to present himself for deportation or to depart the United States. On April 29, 2004, fugitive operations apprehended the applicant at his house. On April 30, 2004, the applicant was removed from the United States at San Ysidro, California. The applicant has remained in Mexico since that departure. On November 8, 2004, the Form I-130 was approved. On November 18, 2004, the applicant filed the Form I-212. The applicant was removed from the United States and is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (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 reenter the United States and reside with his U.S. citizen daughter.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director denied the Form I-212 accordingly. *See Director's Decision* dated February 4, 2005.

On appeal, the applicant contends that the Director erred in finding that the unfavorable factors outweighed the favorable factors.

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 . . .

and who 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.

The record of proceedings indicates that the applicant entered the United States without inspection and, when granted voluntary departure, failed to voluntarily depart the United States. The voluntary departure became a final order of removal with which the applicant failed to comply. Subsequently, after a warrant of removal was issued, the applicant was removed from the United States in 2004. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act and, therefore, must receive permission to reapply for admission.

On appeal, the applicant submits a copy of the Form I-130 approval notice and an affidavit explaining that the reason he did not depart the United States was because his attorney failed to keep him informed in regard to his appeal.

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 in the United States 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 favorable factors in this matter are the applicant's U.S. citizen daughter, the absence of any criminal record since entering the United States, the payment of taxes in the United States, and an approved immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States, extended unauthorized residence and employment in the United States prior to filing a frivolous asylum claim in which he stated that he had not suffered persecution, failure to depart the United States under an order of voluntary departure and non-compliance with a 2004 order of deportation. The applicant's explanation as to why he failed to depart the United States is not an excuse for his actions.

The applicant in the instant case has multiple immigration violations. The applicant's actions in this matter cannot be condoned. The totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the laws of the United States, and that the favorable factors in the present matter are outweighed by the unfavorable factors.

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 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.