

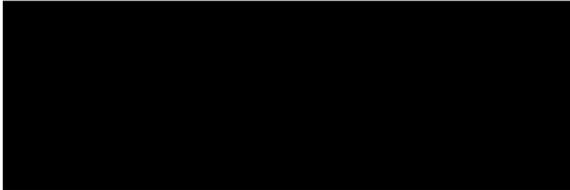
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

*Hcy*

PUBLIC COPY



AUG 16 2006

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

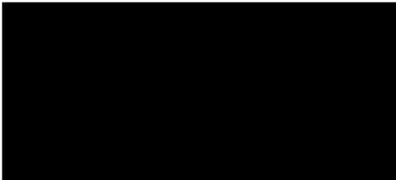
Applicant:



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 Armenia who was admitted into the United States as a non-immigrant visitor for pleasure on September 21, 2000, with an authorized period of stay until April 20, 2001. The applicant was a dependent on an Application for Asylum and for Withholding of Removal (Form I-589) filed by her spouse on January 12, 2001, with the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)). On March 22, 2001, her spouse's asylum application was referred to the immigration court and a Notice to Appear (NTA) for a hearing before an immigration judge was issued. On October 11, 2001, an immigration judge found the applicant removable pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act (the Act), for having remained in the United States longer than permitted. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On April 30, 2003, the applicant departed the United States and as such executed the immigration judge's removal order. On May 12, 2003, the BIA returned the record to the immigration court after it was informed that the appeal was withdrawn. The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) filed by her U.S. citizen son. 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 son.

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 July 28, 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.

On appeal, counsel submits a brief in which he refers to a paragraph in the Director's decision regarding the amendments found in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Counsel states that the Director based his decision on this paragraph and not on the facts of the case. In addition, counsel states that a waiver under section 212(a)(9)(A)(iii) of the Act does not require the applicant to show that a family member will suffer extreme hardship, unlike other waivers of inadmissibility under the Act. Counsel states that this is an indication that Congress intended leniency in adjudicating a 212(a)(9)(A)(iii) waiver. Counsel further states that the applicant's U.S. citizen son, who filed a Form I-130 on her behalf, obtained his permanent residence based on an asylum application. Additionally, counsel states that the applicant has never been arrested, is not a repeat immigration violator, is a person of good moral character, her services are needed by her family in the United States, and she and her family will suffer hardship if she is not permitted to enter the United States. Finally, counsel requests that the appeal be sustained based on the many positive factors in the applicant's case.

In his decision the Director added a paragraph to show the amendments established by IIRIRA and not because these amendment apply to the applicant. The Director relied on section 212(a)(9)(A) of the Act to adjudicate the Form I-212 and not on the paragraph regarding the amendments found in IIRIRA. The AAO notes that the applicant's U.S. citizen son, who filed a Form I-130 on her behalf, entered the United States as a diversity immigrant under section 203(c) of the Act, and not as a result of an asylum application as stated by counsel.

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.*

In his decision, the Director determined that the applicant did not establish any favorable factors to offset her disregard for the laws of the United States and denied the application accordingly.

The AAO does not find that the applicant has shown a complete disregard for the laws of the United States. As noted above, the applicant was authorized to stay until April 20, 2001, and she was a dependent on a Form I-589, which was filed on January 12, 2001. The applicant was a dependent on a non-frivolous asylum

application, and although it was subsequently denied, she was entitled to exhaust all means available to her by law in an effort to legalize her status in the United States. Her appeal conferred on her a status that allowed her to remain in the United States while it was pending. The fact that the appeal was withdrawn before the BIA reached a decision cannot be considered an unfavorable factor.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, her U.S. citizen son and his family, and her Lawful Permanent Resident (LPR) son, an approved Form I-130, the prospect of general hardship to her family, and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's failure to depart the United States immediately after an immigration judge order her removed.

While the applicant's failure to depart the United States after a removal order was issued cannot be condoned, the AAO finds that given all of the circumstances in 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.