



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 29 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, 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 Mexico who, on February 28, 2004, at the Los Angeles, California International Airport, applied for admission into the United States. The applicant presented a valid Mexican passport and a non-immigrant visa. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa. Consequently, on March 24, 2004, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen son. He is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 travel to the United States and reside with his U.S. citizen and Lawful Permanent Resident (LPR) children.

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 August 18, 2005.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years 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 aliens' 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, the applicant states that all his children reside in the United States and he does not have any family in Mexico. In addition, he states that he has been a law-abiding citizen and has been very depressed and psychologically devastated since the death of his spouse and his removal from the United States. Furthermore, the applicant states that his children and their families have been suffering from emotional and psychological hardship since his removal. The applicant submits a letter from his son in which is stated that he, his siblings and their families will suffer extreme emotional, psychological and physical hardship if the applicant is not permitted to enter the United States. Finally, the applicant requests that his application be reconsidered.

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 Director's decision states that the unfavorable factor in the applicant's case is his disregard for the laws of this country. The Director concluded that this factor outweighed the fact that the applicant is the father of a U.S. citizen and that a Form I-130 had been filed on his behalf.

The AAO finds that the favorable factors in this case include the fact that the applicant has no criminal history, has family ties in the United States, a U.S. citizen son, LPR children and U.S. citizen grandchildren, an approved Form I-130, the potential of general hardship to his family and the fact that he did not reenter or attempt to reenter after his removal. The AAO notes that the applicant was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act, because he overstayed his authorized period of stay by six days in January 2002.

The unfavorable factor in this matter is the applicant's six day overstay of his authorized period of stay in January 2002.

While the applicant's overstay is a serious matter that cannot be condoned, the AAO finds that given all the circumstances in the present case, the applicant has established that the favorable factors outweigh the unfavorable factor, 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.