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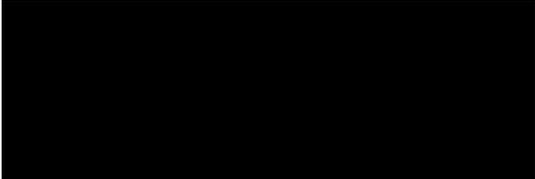
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

HL

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: DEC 04 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.

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 Acting Director, Nebraska 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 a citizen of Mexico who entered the United States without a lawful admission or parole on or about August 18, 1981. On October 14, 1985, the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant and on October 15, 1985, an Order to Show Cause (OSC), for a hearing before an immigration judge was served on him. On October 17, 1985, in the United States Court, Southern District of California, the applicant was convicted pursuant to title 8 U.S.C. § 1325 for knowingly, willfully and unlawfully entering the United States at a time or place not designated by immigration officers. He was sentenced to a \$325.00 fine and time served. The applicant was released to the U.S. Border Patrol. On October 23, 1985, an immigration judge ordered the applicant deported from the United States pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act) for having entered the United States without inspection. Consequently, on the same date the applicant was deported to Mexico. The record reflects that the applicant reentered the United States on an unknown date, but shortly after his deportation, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen sibling. 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 remain in the United States and reside with his U.S. citizen children.

The Acting Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. See *Acting Director's Decision* dated December 7, 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 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 in 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 deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, the applicant states that he believes that he submitted sufficient evidence with the filing of the Form I-212 to prove that he tried to comply with immigration laws since his entry into the United States. The applicant does not dispute the fact that he worked illegally for some years when his application for employment authorization was pending. In addition, the applicant states that he filed an application pursuant to the decision in *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.) but it was denied because the Form I-212 was not approved. The applicant states that he had an attorney in California who told him that the "I-212 appeal was already filed" when in fact the appeal was never filed. Additionally, the applicant states that he is a dedicated worker with the Steel Workers union, he is the owner of two homes and he is an active member of the Steel Workers Union Association for Nevada. Furthermore, the applicant states that his children should not suffer the consequences of a decision made by Immigration. The applicant further states that if he is removed from the United States, his children will be separated from cousins, aunts and an uncle who are part of their everyday life.

The record of proceeding reflects that the applicant applied for legalization on May 4, 1988. On October 3, 1988, the applicant was granted temporary resident status, which was terminated on December 15, 1998, pursuant to section 245A(g)(2)(B)(i) of the Act, 8 U.S.C. § 1255(g)(2)(B)(i). On February 9, 2004, the applicant filed a Motion to Reopen (MTR) the denial of his Application for Status as a Temporary Resident (Form I-687) pursuant to *Proyecto San Pablo*. The MTR was denied by the Acting Director, Nebraska Service Center who certified his decision to the AAO. On April 11, 2005, the AAO affirmed the Acting Director's decision.

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 applicant's family ties in the United States, his U.S. citizen children and siblings, an approved Form I-130, a steady work record, and the absence of a criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial illegal entry into the United States, his illegal reentry subsequent to his deportation, and his periods of unauthorized employment. The applicant was in temporary resident status from October 3, 1988, to December 15, 1998. The applicant had the right to file a legalization application, and although it was subsequently denied, he was entitled to exhaust all means available to him by law in an effort to legalize his status in the United States. As a class member of a lawsuit against the Government the applicant was in a quasi-legal status and his presence in the United States cannot be held against him.

While the applicant's actions are very serious matters that cannot be condoned, the AAO finds that given all the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable ones, 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 of the denial of the Form I-212 is sustained and the application approved.