



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: JUN 14 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:

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who entered the United States without a lawful admission or parole on or about February 20, 1991. On February 2, 1996, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589) with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). On April 24, 1996, the applicant was interviewed for asylum status. His application was referred to the immigration court and an Order to Show Cause (OSC) for a hearing before an immigration judge was personally served on May 9, 1996. On August 19, 1996, an immigration judge found the applicant deportable pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act) for having entered the United States without inspection and granted him voluntary departure until February 19, 1997, in lieu of deportation. The applicant failed to surrender for removal or depart from the United States on or before February 19, 1997. The applicant's failure to depart the United States on or before February 19, 1997, changed the voluntary departure order to an order of deportation. On May 5, 1997, a Warrant of Removal/Deportation (Form I-205) was issued. The applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). He is inadmissible under section 212(a)(9)(A)(ii) of 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 remain and reside in the United States.

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 February 25, 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 for 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 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, counsel submits a brief and documentation previously submitted with the filing of the Form I-212. Counsel submits letters of recommendation regarding the applicant's good moral character, a psychological report and copies of country conditions in Guatemala and requests an oral argument in order to prove that he is eligible to adjust status. In his brief counsel states that the applicant has been present in the United States for approximately 14 years, is a law abiding, hard working individual, pays taxes, has no criminal record and is a person of good moral character. In addition, counsel states that the applicant did not understand the legal consequences of not departing the United States after being granted voluntary departure because he does not know how to read or write in Spanish or English. Additionally, counsel states that the applicant supports his family in Guatemala, and has suffered great emotional distress in Guatemala due to civil war and political strife. Finally, counsel states that the applicant will suffer great hardship if he is not allowed to adjust status.

The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

Counsel's statements are not persuasive. The record of proceedings reflects that the applicant was given written notice of the voluntary departure order in English and Spanish, and oral notice of the contents of the notice in his native language. If the applicant was not able to read English or Spanish, or did not understand the oral explanation of the voluntary departure order, it was his responsibility to obtain clarification of the order, and the legal consequences of his actions. The psychological report, based on the applicant's responses, suggests a history of alcoholism, but no active depression or post-traumatic stress disorder.

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 AAO finds that the favorable factors in this case are the approval of a Form I-140 and the absence of a criminal record.

The unfavorable factors in this matter include the applicant's illegal entry into the United States on or about February 20, 1991, his failure to depart the United States after he was granted voluntary departure, and after his voluntary departure order became a final order of deportation, his unauthorized employment, and his lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee, supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish eligibility 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.