



U.S. Citizenship  
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FILE: Office: CALIFORNIA SERVICE CENTER Date: **MAY 17 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 cursive script, 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 1994, entered the United States without inspection. On January 8, 1997, the applicant was placed in proceedings for entering the United States without inspection. On May 1, 1997, the immigration judge granted the applicant voluntary departure until September 11, 1997. On July 14, 1997, the applicant's request for extension of voluntary departure was denied. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On October 30, 1997, a warrant of deportation was issued informing the applicant that she should present herself for deportation from the United States on November 25, 1997. The applicant failed to present herself for deportation or to depart the United States and has since remained in the United States. On November 17, 1998, the applicant filed the Form I-212. The applicant is 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 remain in the United States and reside with her U.S. citizen father.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors because the applicant failed to provide a timely response to request for documentation to support her application. The Director denied the Form I-212 accordingly. *See Director's Decision* dated March 22, 2005.

On appeal, the applicant contends that she had forwarded a response to the Director's request for documentation. *See Form I-290B*, dated April 14, 2005. In support of her contentions, the applicant submitted copies of the documents she forwarded in response to the Director's request for documentation. The entire record was reviewed in rendering a decision.

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. 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.

The record reflects that, on April 27, 1993, a Petition for Alien Relative (Form I-130) filed on the applicant's behalf by her father, who was a lawful permanent resident of the United States at the time, was approved. On July 22, 2005, the applicant's father became a naturalized U.S. citizen. On appeal, the applicant submits an affidavit stating that her departure from the United States will cause her parents emotional and financial hardship. The applicant states that she provides financial support to her parents and that her departure would create an additional expense for them. The applicant asserts that her father is very ill and requires her assistance because her mother is unable to care for him by herself. In support of these contentions, the applicant submitted a Naturalization Applicant's Medical Certification for Disability Exceptions (Form N-648), indicating that due to various ailments, the applicant's father was qualified for an exception from the English and U.S. history and government (civics) requirements for naturalization based on physical or developmental disability or mental impairment. Apart from the applicant's affidavit, there is no evidence in the record to suggest that the applicant's father requires the applicant's care or that her mother is unable to provide this care. Apart from the applicant's affidavit, there is no evidence in the record to suggest that the applicant provides financial assistance to her parents.

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 father 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, failure to depart the United States under an order of voluntary departure and non-compliance with a 1997 order of deportation.

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 she 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.