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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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HA

FILE:

Office: BALTIMORE, MARYLAND

Date:

NOV 06 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.

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 District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who was admitted into the United States on June 1, 1971, with an authorized period of stay until June 9, 1980, as a nonimmigrant dependent spouse of a nonimmigrant student. On November 13, 1979, an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was issued. On April 13, 1982, an immigration judge found the applicant deportable pursuant to section 241(a)(9) of the Immigration and Nationality Act (the Act), as an alien who after admission as a nonimmigrant failed to comply with the conditions of such status and granted her voluntary departure until June 1, 1982, in lieu of deportation. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which she withdrew on June 30, 1983. Because the applicant withdrew her appeal before the BIA adjudicated it, the immigration judge's deportation order became final. The record reflects that the applicant departed the United States on September 13, 1983, and, as such, self deported. The record further reflects that on July 23, 1985, the applicant was issued a nonimmigrant visa. The applicant was admitted as a nonimmigrant visitor on several occasions, the last time being on May 29, 1986. The applicant overstayed her authorized period of stay and on July 24, 1997, she applied for adjustment of status based on an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen daughter. 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 remain in the United States and reside with her U.S. citizen daughter.

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. See *District Director's Decision* dated November 21, 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.

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; (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/or from being present in the United States without a lawful admission or parole.

On appeal, counsel submits a brief in which he states that the applicant should not have been required to file a Form I-212 because after she was granted voluntary departure she filed a timely appeal with the BIA and, therefore, the running of her voluntary departure period was tolled and she departed under a voluntary departure order. In addition, counsel states that the District Director arbitrarily found that the applicant misrepresented her departure to the consular officer in order to obtain a nonimmigrant visa. Additionally, counsel states that the applicant does not need to show exceptional hardship in order for the Form I-212 to be granted. Furthermore, counsel states that the applicant's alleged deportation occurred 23 years ago, she never violated any criminal laws, she is the mother of a U.S. citizen, she has resided continuously in the United States for 20 years, she has been steadily employed, and she has always complied with tax laws. Finally, counsel states that the favorable factors clearly outweigh the unfavorable factors and he requests that the Form I-212 be granted.

Although the filing of a timely appeal with the BIA tolls the running of a grant of voluntary departure, once the applicant withdrew her appeal, the immigration judge's order became final. As she did not depart prior to the date granted by the immigration judge, the grant of voluntary departure became an order of deportation. Therefore, by departing on September 13, 1983, the applicant self deported and must file a Form I-212. The proceeding in the present case is for an application for permission to reapply for admission into the United States after deportation or removal and, therefore, the AAO will not discuss the applicant's possible misrepresentation to the consular officer in order to obtain a nonimmigrant visa. This proceeding is limited to the issue of whether or not the applicant meets the requirements necessary for the ground of inadmissibility under section 212(a)(9)(A)(ii) of the Act to be waived. That is the only issue that will be discussed.

The AAO agrees with counsel that the applicant does not need to show exceptional hardship in order for the Form I-212 to be granted. Unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied.

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, her U.S. citizen daughter, an approved Form I-130 and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's overstays of her authorized periods of stay, her lengthy periods of unauthorized employment and her extended presence in the United States without authorization. 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.