



U.S. Citizenship
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Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: OCT 24 2006

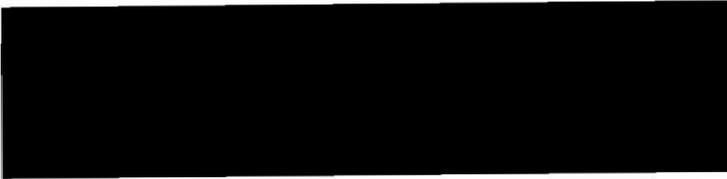
IN RE:

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 sustained and the application approved.

The applicant is a native and a citizen of Colombia who entered the United States without a lawful admission or parole on May 4, 1988. On May 5, 1988, the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant and an Order to Show Cause (OSC) for a hearing before an immigration judge was served on her. On June 30, 1988, the applicant failed to appear for the deportation hearing and she was subsequently ordered deported *in absentia* by an immigration judge, pursuant to section 241(a)(2)(B) of the Immigration and Nationality Act (the Act), for entering the United States without inspection. On August 4, 1988, a Warrant of Removal/Deportation (Form I-205) was issued and a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that she appear at the El Paso, Texas District Office in order to be removed from the United States. The applicant failed to appear as requested. The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) filed by her Lawful Permanent Resident (LPR) mother. 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 LPR mother and her U.S. citizen children.

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 May 3, 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, counsel submits a brief in which she states that the applicant did not appear at her deportation hearing because she never received a notice of the hearing. According to counsel, she found out about her deportation order when she requested a copy of her immigration file many years later. In addition, counsel states that the Director's decision failed to acknowledge that the applicant's children would suffer extreme hardship if the applicant were deported. Since the applicant is a single mother, her children would be forced to relocate to Colombia with her. Counsel further states that the applicant would be unable to find employment to support her children. Furthermore, counsel states that two of the applicant's children are part of a special education program at their school and in Colombia they would face educational problems. With the filing of the Form I-212, counsel submitted copies of Country Reports on Human Rights Practices for Colombia, which state that children in Colombia face problems, such as lack of adequate medical care, abuse, exploitation, child labor injury from conflict zones, forcible recruitment by paramilitary and guerrillas, child prostitution and trafficking. Moreover, counsel states that the applicant's immigration violations do not support a finding of lack of good moral character. Counsel states that the applicant is a person of good moral character with no criminal record who supports her three children and her LPR mother, she is not a public charge, has been paying income taxes and owns property in the United States.

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 be a condonation of the alien's acts and could encourage others to enter without being admitted and 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.*

In his decision, the Director determined that the applicant's illegal entry, failure to appear for deportation proceedings, failure to depart the country after she was ordered deported, failure to provide the Service with a change of address and her illegal stay and employment in the United States outweigh all favorable factors and denied the application accordingly.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, her U.S. citizen children and LPR mother, an approved Form I-130, the absence of any criminal record, the potential of general hardship to her family and the numerous favorable recommendations attesting to her good moral character. The AAO notes that two of the applicant's children are in special education programs in the United States and they would face economic, educational and social hardship if they relocate to Colombia, or in the alternative, if they remain in the United States without the applicant.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry, her failure to appear for a deportation hearing, her periods of unauthorized employment and her unlawful presence in the United States.

While the applicant's actions cannot be condoned, the AAO finds that given all of the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, 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.