



U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 25 2006

IN RE:

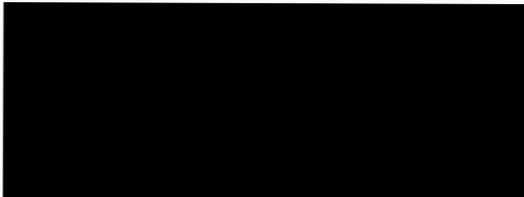
Applicant:



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, California 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 citizen of Korea who was granted lawful permanent resident status on July 14, 1984. On April 7, 1997, at the Los Angeles, California International Airport, the applicant applied for admission into the United States as a returning permanent resident. The applicant was ordered to appear for deferred inspection because of questions regarding her admissibility. On June 6, 1997, during her deferred inspection, the applicant was found inadmissible pursuant to section 212(a)(5)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(5)(A)(i), as an alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor without a valid labor certification issued by the Secretary of Labor, and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I), for being an immigrant not in possession of a valid immigrant visa or other valid entry document. On October 11, 1997, a Notice to Appear (NTA) for a removal hearing before an immigration judge was issued. On May 7, 1999, an immigration judge ordered her excluded pursuant to section 212(a)(7)(A)(i)(I) of the Act. On June 7, 2000, the Board of Immigration Appeals (BIA) denied the applicant's motion to accept an untimely brief and on September 12, 2002, the BIA affirmed, without opinion, the immigration judge's decision. The applicant filed a petition for review of the order of the BIA and a motion for a stay of removal with the United States Court of Appeals for the Ninth Circuit. The applicant was granted temporary stay pending the court's disposition on her petition for review. On April 14, 2004, the Ninth Circuit Court of Appeals denied the applicant's petition for review. The applicant is the beneficiary of 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 children and her Lawful Permanent Resident (LPR) child.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones and denied the Form I-212 accordingly. *See Director's Decision* dated November 17, 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 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 has three young daughters residing in the United States and she has shown no "disregard for the laws" of the United States. In addition, counsel alleges that because the Director incorrectly applied or failed to apply all of the facts and evidence in the record, and the substantial equities in the applicant's case, the Form I-212 warrants a favorable decision. Counsel states that in 2001 the applicant was issued an Arrival-Departure Record (Form I-94), with a stamp indicating "Temporary Evidence of Lawful Permanent Residence" which was valid until February 21, 2003. Counsel further states that the applicant was an LPR who never entered the United States without inspection. In addition, she has family responsibilities in the United States and never intended to disregard the laws of the United States. According to counsel, the applicant has two U.S. citizen children and one LPR child who are dependent on her and will experience extreme emotional and financial hardship if the applicant is not permitted to remain in the United States. Additionally, counsel asserts that the applicant did not intend to disregard the laws of the United States and she was placed in removal proceedings because of her multiple departures from the United States and not because of any illegality. Finally, counsel requests that the Director's decision be set aside and that the application be granted.

The AAO notes counsel did not provide a copy of the Form I-94, nor proof of the applicant's children's immigration status. The record of proceeding does not reflect that a Form I-94 was issued on behalf of the applicant in 2001. The record of proceeding as well as the electronic database of Citizenship and Immigration Services (CIS) reveals that two of the applicant's children are U.S. citizens. There is no information regarding the immigration status of the applicant's third child.

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.*

In his decision, the Director determined that the applicant did not establish any favorable factors to offset her disregard for the laws of the United States and denied the application accordingly.

After a review of the record of proceeding, the AAO finds that the favorable factors outweigh the unfavorable. The favorable factors in this case include the applicant's family ties in the United States, her U.S. citizen children, an approved Form I-130, the prospect of general hardship to her family, the absence of any criminal record, and the fact that she had previously been granted LPR status.

The AAO finds that the unfavorable factors in this case include the applicant's frequent and extensive trips aboard while in LPR status and her failure to depart the United States after a removal order was issued.

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.