

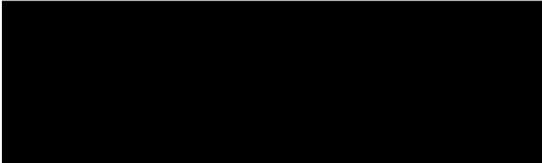
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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: DENVER, COLORADO

Date: **APR 03 2007**

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:

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 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, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen Mexico who entered the United States without a lawful admission or parole sometime in 1993. The applicant departed the United States on an unknown date and on October 30, 1996, she was admitted after she presented an Alien Registration Card (Form I-551) that did not belong to her. On October 30, 1996, the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant. On the same date an Order to Show Cause (OSC) for a hearing before an immigration judge was served on her. On December 16, 1996, 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)(1)(A) of the Immigration and Nationality Act (the Act), as an alien excludable at time of entry for obtaining entry into the United States by fraud or misrepresentation. On January 2, 1997, a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that she appear at the El Paso District Office in order to be removed from the United States. The applicant failed to surrender for removal or depart from the United States. On February 11, 1998, a Warrant of Removal/Deportation (Form I-205) was issued. Consequently, on March 14, 1998, the applicant was apprehended and on April 1, 1998, she was removed from the United States. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She now 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 travel to the United States and reside with her Lawful Permanent Resident (LPR) spouse and children.

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 4, 1005.

On appeal, the applicant states that she wishes to be able to return to her family in Denver, Colorado who she has not seen since her deportation on April 1, 1998. The applicant states that she has suffered from the separation from her family and being apart from her five children. In addition, the applicant states that she never received a notice for a court hearing and that is the reason she did not appear at her deportation hearing. Additionally, the applicant states that since her removal she has suffered from depression and requests that she be permitted to travel to the United States to be with her family. Furthermore, the applicant submits a letter from her spouse in which he states that their children need the applicant because he works and cannot be with them all the time. In addition, the applicant's spouse states that he cannot give their children the love and support a mother can give and it is difficult for him to raise two daughters.

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. The AAO will consider the hardship to the applicant's spouse and children, but it will be just one of the determining factors.

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 in 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.

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.*

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, her LPR spouse and children, the prospect of general hardship to her family and the absence of any criminal record.

The AAO notes that the applicant did not submit documentary evidence to show that she has resided in Mexico since the date of her deportation nor documents regarding the immigration status of her children.

The AAO finds that the unfavorable factors in this case include the applicant's initial illegal entry, her reentry by fraud, her failure to appear for deportation proceedings, her employment without authorization and her 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.