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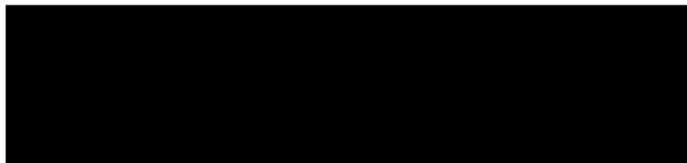
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: APR 03 2007

IN RE:

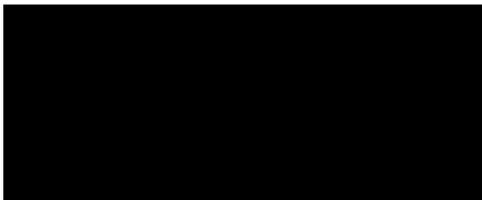
Applicant:



APPLICATION:

Application for Permission to Reapply for Admission after Removal into the United States after Deportation 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, who certified her decision to the Administrative Appeals Office (AAO) for review. The Director's decision will be affirmed and the application denied.

The applicant is a native and citizen of Mexico who on May 6, 1997, applied for asylum with the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)). The applicant failed to appear for two scheduled interviews and a Notice to Appear for a hearing before an Immigration Judge was issued on October 30, 1997. On January 26, 1998, the applicant failed to appear for a removal hearing and was subsequently ordered deported *in absentia* by an immigration judge pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(A)(i), for having been present in the United States without being admitted or paroled. The applicant failed to surrender for removal or depart from the United States and a Warrant of Deportation (Form I-205) was issued on December 3, 1998. On August 26, 2003, at the Nogales, Arizona Port of Entry the applicant applied for admission into the United States with a border-crossing card. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i), for willfully misrepresenting a material fact in order to procure a visa for the United States. Consequently, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), and 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 as a nonimmigrant visitor.

The Director determined that the applicant is not eligible for any relief or benefit from the Act and denied the Form I-212 accordingly. *See Director's Decision* dated October 18, 2004. The AAO withdrew the Director's decision and remanded the case to him in order to adjudicate the Form I-212 pursuant to section 212(a)(9)(A)(iii) of the Act. *See AAO Decision* dated August 5, 2005. 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 December 4, 2006.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Director's findings. No additional evidence has been entered into the record.

On appeal, counsel submitted a brief and documentation to show that the applicant has been living in Mexico since 1986. In his brief counsel stated that the applicant never defrauded the United States and, therefore, he is admissible to the United States. Counsel stated that although the applicant filed an Application for Asylum and Withholding of Deportation (Form I-589) he never resided in the United States, and he thought that he was signing documents in order to obtain permission to work. Counsel further stated that the individual who filed the Form I-589 on the applicant's behalf made numerous misrepresentations on the application. In addition, counsel stated that the applicant was not aware of his asylum interview date, his removal hearing date or his final removal order because he never lived in the United States and, therefore, he never received any documentation. Counsel also stated that although the applicant signed the Form I-589 he did not review it. Further, counsel stated that the applicant did not commit fraud when he applied for his border-crossing card because he obtained a new border-crossing card when an American Consul automatically replaced his old card without conducting an interview. Finally, counsel requested that the Form I-212 be granted because the applicant was never aware of his deportation and never made a misrepresentation or concealed a material fact when he applied for a border-crossing card.

Counsel's statement that the applicant was misguided by an individual who promised to help him get permission to work in the United States is not persuasive. The applicant signed the Form I-589 and it was his responsibility to review the application and assure that he knew what he was applying for. In addition, the record of proceeding contains a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867A) dated August 26, 2003, in which the applicant admitted under oath that he had been deported from the United States twice. In addition, the applicant stated that he never informed the consular officer of his deportations when he obtained a nonimmigrant visa on February 28, 2000. The Form I-867A indicates that his statement was read to him before he signed it and that his signature indicated that the statement is a full, true and correct record of his interrogation.

The AAO does not have jurisdiction over, and will not discuss, the circumstances surrounding the applicant's removal, nor any other possible grounds of inadmissibility. The fact remains that the applicant was removed from the United States on August 26, 2003, and, therefore, he is inadmissible under section 212(a)(9)(A)(i) of the Act. 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)(i) of the Act to be waived.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years 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 the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

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.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his mother and siblings.

The AAO finds that the unfavorable factors in this case include the applicant's un-supported application for asylum, his misrepresentation in order to obtain a nonimmigrant visa and his attempt to enter the United States after previous immigration violations.

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 factors.

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 decision of the Director to deny the application will be affirmed.

ORDER: The Director's decision is affirmed.