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



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: APR 05 2007

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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 Mexico who entered the United States without a lawful admission or parole in 1989. The applicant departed the United States on an unknown date, and on September 19, 1996, at the San Ysidro, California Port of Entry, applied for admission into the United States. The applicant presented a counterfeit Alien Registration Card (Form I-551). The applicant was found to be inadmissible pursuant to 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. The applicant was placed in exclusion proceedings, and on September 23, 1996 an immigration judge ordered the applicant excluded and deported from the United States. Consequently, on the same date the applicant was deported from the United States. The record reflects that the applicant reentered the United States on an unknown date but shortly after his deportation, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 remain in the United States and reside with his U.S. citizen spouse and child.

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 16, 2005.

On appeal, counsel submits a brief, statements from the applicant and his spouse, letters from the applicant's child's speech education teacher, speech and language pathologist, and doctor, copies of the applicant's child's medical records, a letter from the applicant's employer, letters of recommendation regarding the applicant's good moral character, and articles regarding access to health care in Mexico and employment conditions. In his brief, counsel states that the Director failed to consider all pertinent factors and gave undue weight to the unfavorable factors. Counsel states that the Director failed to consider the applicant's lengthy residence in the United States, the mental retardation of his child and the child's special education and medical needs, the applicant's moral character, work history and family responsibilities, and the hardship his spouse and child will suffer. Counsel further states that the Director relied on case law that is not supported by current Ninth Circuit Law. Counsel refers to *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004) which states that an individual who was removed and reentered without inspection is eligible to file a Form I-212, and have it adjudicated, as long as he filed the Form I-212 before his removal order was reinstated. In addition, *Perez-Gonzalez* states that if permission to reapply is granted, the approval of Form I-212 is retroactive to the date on which the alien entered the United States, the applicant would no longer be inadmissible under section 212(a)(9) of the Act and would be eligible to adjust his status under section 245(i) of the Act. In addition, counsel states that the Director did not mention that since the applicant's entry into the United States, he has been employed and has filed income tax returns, has provided financial assistance to his parents and siblings, is the sole breadwinner for his family, and is recognized as an invaluable employee and a person of superior work ethic by his employer and colleagues. Further, counsel states that the applicant's child suffers from mental retardation and asthma, and if the applicant is forced to depart the United States his family will suffer extreme hardship because they will lose their only source of financial

support and the health insurance coverage necessary for the applicant's child's medical conditions. Finally, counsel requests that the AAO revise the Director's decision and grants the Form I-212.

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.

The applicant in the present matter married his U.S. citizen spouse on November 28, 1998, over two years after he was placed in exclusion proceedings and after he reentered illegally. The applicant's spouse should reasonably have been aware at the time of their marriage, of the applicant's immigration violations and the possibility of his being removed. He now seeks relief based on that after-acquired equity. Therefore, hardship to his spouse will be given appropriate weight.

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 child, but it will be just one of the determining factors.

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 Director failed to consider the serious medical condition of the applicant's child and the hardship his family will suffer if the applicant is removed from the United States. The child would face an exacerbation of his medical conditions if he relocates to Mexico, or in the alternative, if he remains in the United States without the applicant. This is in addition to the economic and emotional hardships the child and his mother would experience.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his U.S. citizen spouse and child, an approved Form I-130, the absence of any criminal record, the potential of hardship to his family, the fact that he has filed tax returns, as required by law, and the numerous letters of recommendation attesting to his good moral character.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry, his attempt to gain entry by fraud, his illegal reentry after his deportation and his periods of unauthorized employment in the United States.

While the applicant's actions are very serious and cannot be condoned, the AAO finds that given all the circumstances in 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.