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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 30 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) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who attempted to enter the United States on January 3, 2000, by presenting a Permanent Resident Card (Form I-551) in someone else's name. On the same day, the applicant was removed to Mexico. On January 10, 2000, the applicant again attempted to enter the United States by presenting a Border Crossing Card in someone else's name. On January 12, 2000, United States District Court judge convicted the applicant of using false identification documents, in violation of 18 U.S.C. § 1028(a)(4)(b)(6), and sentenced the applicant to 30 days in jail. On February 8, 2000, the applicant was removed to Mexico. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his United States citizen spouse. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (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 reside with his wife and children.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *Director's Decision*, dated August 21, 2006.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' 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, the applicant states that his wife is permanently disabled and she needs the applicant in the United States. *Form I-290B*, filed September 20, 2005. [REDACTED] states the applicant's wife is disabled and suffers from numerous medical conditions, including major depression. *Note from [REDACTED], El Centro Regional Medical Center*, dated September 5, 2006; *see also Computer Printout from Social Security Administration*, dated September 6, 2006; *see also Computer Printouts from Imperial County Department of Social Services*. The AAO notes that there is no indication that the applicant's wife could not receive treatment for her medical conditions in Mexico. Additionally, there was no documentation submitted that the applicant's wife relies on the applicant's assistance. The AAO notes that the applicant demonstrated that his wife receives social security payments based on being a disabled individual. However, 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. The AAO notes that the applicant's spouse did not provide a statement or an affidavit regarding what, if any, hardship she would suffer if the applicant were removed from the United States. Additionally, there was no documentation submitted that the applicant provides any financial assistance to his wife and children.

The record of proceedings reveals that on January 3, 2000, the applicant attempted to enter the United States by presenting a Form I-551 in someone else's name. On the same day, the applicant was ordered removed from the United States. On January 10, 2000, the applicant again attempted to enter the United States by presenting a Border Crossing Card. On February 8, 2000, the applicant was removed from the United States. Based on the applicant's previous orders of removal, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

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 favorable factors in this matter are the applicant's family ties to United States citizens, his wife and children, general hardship they may experience, and the approval of a petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's repeated attempts at entering the United States by presenting entry documents in other people's names, his criminal record, and periods of unauthorized presence.

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 that he is eligible 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.