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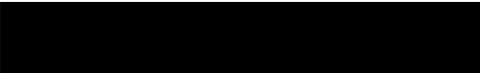
Office: CALIFORNIA SERVICE CENTER

Date:

DEC 04 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:



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 sustained and the application approved.

The applicant is a native and citizen of El Salvador who entered the United States without inspection on May 9, 1983. On June 26, 1984, an immigration judge granted the applicant voluntary departure. The applicant departed the United States in July 1984 and reentered the United States without inspection in July 1984. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), and 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i). 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 reside with her United States citizen son.

The Director determined that the applicant is inadmissible pursuant to sections 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being present without admission or parole, and 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being ordered removed, and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated August 29, 2006.

Section 212(a)(6). Illegal entrants and immigration violators.-

(A) Aliens present without admission or parole.-

- (i) In general.—An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General [now, Secretary, Department of Homeland Security], is inadmissible.

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 [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, through counsel, contends that the Director erred when he "did not consider the favorable factors in their totality." *Brief in Support of Appeal*, page 2, filed October 26, 2006. Counsel states that the applicant voluntarily departed the United States in July 1984 and reentered the United States the same month. *Id.* at 4; *see also Declaration of the applicant*, dated October 16, 2006. The AAO notes that there was no documentation submitted establishing that the applicant voluntarily departed the United States in July 1984, and even if she voluntarily departed, less than a month after the applicant departed the United States, she reentered without inspection, and has been residing in the United States since that time without authorization, which is an unfavorable factor. Counsel states the applicant has not departed the United States since her last entry in July 1984, and that if she returns to El Salvador she will not be able to find employment and support her son. *Brief in Support of Appeal*, page 4, *supra*. Counsel states the applicant has "maintained steady employment" and she is "a reliable employee and contributing member of society." *Id.* at 5. The applicant states she has "continuously lived and worked in the United States since 1984." *Declaration of the applicant, supra*. The AAO notes that the applicant has been working without authorization and that is an unfavorable factor. Counsel states the applicant had her son on September 14, 1988, and "[s]hortly after the birth of her son, the baby's father abandoned the home which left [the applicant] to raise her son on her own." *Id.* at 4. Counsel states that if the applicant is removed from the United States, "her son will suffer emotionally and economically." *Id.* The applicant states she "will not be able to financially support [her] son if [she] had to live in El Salvador." *Declaration of the applicant, supra*. The applicant's son is "dependent mostly upon [the applicant's] income" and he "will suffer extreme hardship because he relies on [the applicant] for support." *Brief in Support of Appeal*, page 5, *supra*. 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 son, but it will be just one of the determining factors.

An August 13, 1984 Notice of Immigration Court Action contained in the record indicates that the applicant was given a final order.¹ Based on the applicant's statements, she departed the United States in July 1984, and in the same month, she reentered the United States without inspection. Based on the applicant's previous order of deportation, the applicant is 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 a United States citizen, her son, general hardship he may experience, and no criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, her illegal entry into the United States subsequent to her voluntary departure order, and periods of unauthorized presence and employment.

While the applicant's actions 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 factors, 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 is sustained and the application approved.

¹ The actual final order of the immigration judge is not contained in the record. Electronic court records reflect that the applicant was granted voluntary departure on June 24, 1984. If that is accurate, and if she departed as claimed, she likely complied with the voluntary departure order and the Form I-212 is therefore not necessary as she was never ordered deported. However, the voluntary departure is not confirmed by documents in the record. The AAO will therefore, go on the assumption that a final order was issued.