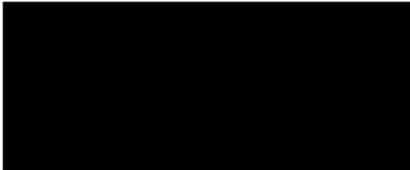


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FILE:



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 India who entered the United States on May 30, 1993, with an M-1 nonimmigrant visa, with authorization to remain in the United States until July 31, 1993. On June 12, 1993, the applicant married [REDACTED] a lawful permanent resident, in Nevada. On July 12, 1993, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On July 22, 1993, the applicant's Form I-130 was approved. On or about September 9, 1993, the applicant filed a Request for Asylum in the United States (Form I-589), under the name of [REDACTED]. On December 27, 1994, the applicant's daughter, [REDACTED] was born in California. On March 11, 1997, an immigration judge denied the applicant's Form I-589 and ordered her deported *in absentia* from the United States. On September 8, 1997, the applicant filed a motion to reopen the immigration judge's decision, which the immigration judge denied on December 3, 1997. On July 30, 1998, the applicant's [REDACTED] was born in California. On December 1, 1998, the applicant's husband became a United States citizen. The applicant then filed an appeal with the Board of Immigration Appeals (Board), which the Board dismissed on April 27, 1999. On or about June 2, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 19, 1999, the applicant's son, [REDACTED] was born in California. On March 21, 2001, the applicant voluntarily departed the United States. 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), 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), and 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for her willful misrepresentations in order to obtain a benefit under the Act. 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 naturalized United States citizen husband and three United States citizen children.

The Director determined that the applicant is inadmissible pursuant to sections 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being ordered removed under section 240 or any other provision of law, and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for one year or more and seeking admission within 10 years of her departure from the United States. 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 May 31, 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, through counsel, states the Director's "basis for his decision is that applicant does not obey the laws of this country. Applicant had lived in the U.S. for 8 years and had never committed any crimes or offenses. The only mistake she made was act on poor advise [sic] and counsel. However, once she realized that it was not sound advise [sic], she immediately presented herself for deportation, paid for her own expenses and left the country immediately. She followed the law at a very high cost to herself and to her three minor U.S.C. children and U.S.C. husband." *Attachment to Form I-290B*, filed August 30, 2006. The AAO notes that the applicant filed her Form I-589 on September 9, 1993, and she did not depart the United States until March 21, 2001, which is more than seven (7) years after she was ordered deported by an immigration judge. The AAO finds that the applicant's voluntary departure from the United States and the fact that she has not reentered the United States are positive factors. However, the applicant resided in the United States for numerous years without authorization, which is an unfavorable factor. The applicant states that she does not want her "husband and children to suffer because [she] received and followed wrong advice." *Declaration of the applicant*, dated June 28, 1999. The applicant's husband states he is "unable to adequately care for [his] U.S. citizen children while [the applicant] is gone. [He works] long hours. [He] cannot send [his] two oldest children...to India because it would deprive them of an American education and would be very emotionally difficult for them. Also...the youngest has a medical problem...He is currently in India because [he] cannot take care of him." *Declaration of N* [redacted] dated June 11, 2001. The AAO notes that [redacted] states the applicant's son, [redacted] was diagnosed with kidney problems. *Letter from* [redacted], *The Permanent Medical Group, Inc.*, dated March 20, 2001. Additionally, [redacted]

states that while the applicant's son has been in India, he has had "repeated respiratory and gastrointestinal infections... urinary infections... not thriving well...[and] behavioral problems." *Medical History of [redacted] by [redacted]*, dated February 15, 2002. [redacted] states the applicant's son "has been repeatedly and frequently treated for the infections with antibiotics and other measures, yet the child tends to catch infections, due to environmental pollution and water. His growth parameters are suffering...Prevention of repeated infections by sending the child back home to USA in a cleaner healthier environment." *Id.* The AAO notes that 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 record of proceedings reveals that on March 11, 1997, an immigration judge ordered the applicant deported *in absentia* from the United States. The applicant failed to depart the United States until March 21, 2001. Based on the applicant's previous order of deportation, 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 citizens of the United States, her husband and children, general hardship they may experience, no criminal record, the approval of a petition for alien relative, and her voluntary departure from the United States.

The AAO finds that the unfavorable factors in this case include the applicant's failure to abide by an order of deportation, her submission of a fraudulent asylum claim under an assumed name, 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. The AAO notes, however, that she will need to obtain waivers of her inadmissibility under sections 212(a)(6)(C) and 212(a)(9)(B)(II) of the Act.

ORDER: The appeal is sustained and the application approved.