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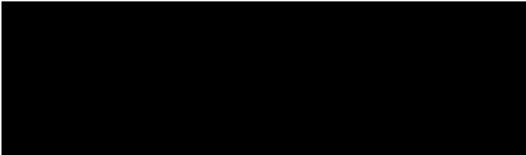
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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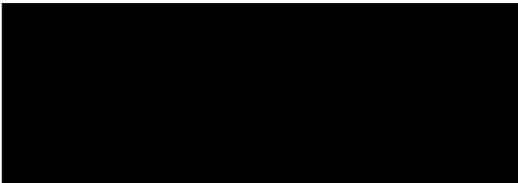
DEC 27 2007

IN RE:



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:



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 District Director, Helena, Montana, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who, on August 1, 2004, applied for admission to the United States at the Roosville, Montana Port of Entry. When immigration officers questioned the applicant as to his criminal history he indicated that he had never been arrested or charged with a crime nor had he been previously denied entry to the United States. The applicant was placed into secondary inspection, where he stated that he had received a pardon for a number of crimes of which he had been convicted. It was also determined that the applicant had been previously denied entry to the United States in 2003 due to his prior criminal convictions. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by willful misrepresentation of a material fact or fraud. On August 2, 2004, 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). On November 21, 2005, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). He 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 visit the U.S. relatives of his spouse.

The district director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *See District Director's Decision* dated December 22, 2005.

On appeal, counsel contends Citizenship and Immigration Services (CIS) applied an incorrect legal standard in denying the Form I-212 and failed to weigh the positive and negative factors in the applicant's case. He contends that the applicant is eligible for permission to reapply for admission. *See Form I-290B*, dated January 18, 2006; *Counsel's Brief*, dated February 16, 2006. In support of his contentions, counsel submits the referenced brief and copies of documentation submitted with the applicant's Application for Advance Permission to Enter as Nonimmigrant (Form I-192). The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) 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. [emphasis added]
- (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 who 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.

In that the applicant, in 2004, was removed from the United States pursuant to section 235(b)(1) of the Act, the AAO finds that the applicant is inadmissible under section 212(a)(9)(A) of the Act and, therefore, must receive permission to reapply for admission.

Section 101(43) of the Act states in pertinent part:

(43) The term "aggravated felony" means-

.....
(B) illicit trafficking in a controlled substance . . .

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

(1) Criminal and related grounds. —

(A) Conviction of certain crimes. —

(i) In general. — Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of —

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(a)(2)(C) provides:

CONTROLLED SUBSTANCE TRAFFICKERS- Any alien who the consular officer or the Attorney General knows or has reason to believe--

- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so

.....
is inadmissible

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

On February 1, 1980, the applicant was convicted of the aggravated felony of possession of a narcotic for trafficking. On September 20, 1985, the applicant was convicted of the aggravated felony of conspiracy to traffic in a narcotic. The record also reflects that the applicant was convicted of being unlawfully at large, theft greater than \$200, possession of narcotics, breaking, entering and theft and breaking and entering with intent in 1975. The applicant was convicted of possession of narcotics in 1978 and driving under the influence in 1985. On July 31, 2002, the applicant received a pardon from the Canadian National Parole Board (CNPB) for these crimes, including the referenced aggravated felonies. The pardon specifically provides that, while the pardon means the applicant's convictions should no longer reflect negatively on the applicant's character, it does not erase the fact that the applicant was convicted of the offenses and has a criminal record. *See Pardon Under the Criminal Records Act*, dated July 31, 2002.

A "conviction" for U.S. immigration purposes is defined in section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where --

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The pardon provided to the applicant provides a limited expungement even under Canadian law, and a conviction expunged under that provision remains a conviction for immigration purposes. Accordingly, the

applicant's convictions, including those for possession of narcotics for trafficking and conspiracy to traffic narcotics, are convictions for immigration purposes.

The record reflects that the applicant is a native and citizen of Canada who is married to [REDACTED] (Ms. [REDACTED], a native and citizen of Canada. The applicant and Ms. [REDACTED] do not have any children together. The applicant is in his 50's and Ms. [REDACTED] is in her 40's.

On appeal, counsel asserts that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act because he believed that his pardon eliminated his criminal history. The applicant and his spouse, in their declarations, indicate that, in December 2003, when the applicant had revealed his prior criminal history and his pardon to immigration officers he had been denied entry into the United States due to those criminal convictions. Counsel asserts that the applicant did not fully comprehend the significance of or reason for the denial of his entry into the United States in 2003 and that his misrepresentation in 2004 was not willful because he stated his misunderstanding the effect of the pardon on his prior convictions for U.S. immigration purposes and did not have an evil-intent. However, the applicant and his spouse, in their declarations, indicate that the applicant was informed that he was being denied entry into the United States in 2003 due to his criminal convictions and that the Canadian pardon did not erase those convictions for immigration purposes. *See Spouse's Déclaration, Paragraphs 25-26*, dated September 26, 2005. Moreover, while counsel and the applicant assert that the applicant responded negatively when immigration inspectors asked him whether he had ever been arrested or charged with a crime because his counsel had informed him that he did not need to reveal such information due to the pardon, the pardon itself states it "does not erase the fact that an individual was convicted on an offence(s) and has a criminal record." *See Pardon Under Criminal Records Act, Paragraph 4*.

While counsel asserts that the applicant was not under oath when he responded "No" to inquiries of whether he had ever been arrested or charged with a crime or whether he had ever been denied entry into the United States, inadmissibility under section 212(a)(6)(C)(i) of the Act does not require an applicant to be placed under oath at the time of questioning. Counsel asserts that the applicant did not make any false statements after he was placed into secondary inspection and placed under oath. Counsel asserts that any unintentional misrepresentation made by the applicant was timely retracted. However, the applicant states that, prior to being placed into secondary inspection, he responded "No" to numerous inquiries as to whether he had been arrested or charged with a crime or denied entry into the United States and only explained that he had received a pardon after he was confronted with this information by the immigration inspector who was aware of his convictions and prior refusal. *See Applicant's Declaration, Paragraph 38*, dated September 26, 2005; *Spouse's Declaration, Paragraph 28*, dated September 26, 2005.

The Department of State Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. Stated in part; (1) a misrepresentation can be made orally or in writing, (2) silence or the failure to volunteer information does not in itself constitute a misrepresentation, (3) the misrepresentation must have been practiced on an official of the U.S. government, generally a consular or immigration officer, (4) a timely retraction will avoid the penalty of the statute. Whether a retraction is timely depends on the circumstances of the particular case.

A timely retraction has been found in cases where applicants used fraudulent documents only *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984). In the instant case, the applicant states that he retracted claims that he had not been arrested or charged with a crime or

previously denied entry into the United States, only when he was informed by immigration officials that they were in possession of this information. Based on the record, the AAO finds that the applicant did not offer a timely retraction or explanation of his prior criminal and immigration history.

On appeal, counsel asserts that the applicant wishes to visit family in the United States with whom he shares a close and loving relationship. Counsel asserts that the applicant is a person of good moral character and that the district director erred in utilizing the applicant's recent removal as an adverse factor to determine that the applicant had failed to establish a reformed character. Counsel asserts that that applicant's "horrendous" upbringing was partly to blame for the applicant's criminal history and that, in 1985, after he met his future wife, the applicant turned his life around and is now a committed husband, son, brother-in-law and member of the community. Counsel asserts that the applicant and his spouse own a house in Canada and regularly file Canadian tax returns. Counsel asserts that the applicant's spouse has a large close-knit family of which the applicant has become an integral part. Counsel asserts that the applicant and his spouse are especially close to his spouse's sister, [REDACTED] (Ms. [REDACTED], who resides in Missoula, Montana, with her U.S. citizen husband and children. Counsel asserts that the length of time that has passed since the applicant's last conviction coupled with his full pardon demonstrates that the applicant has turned his life around. Counsel asserts that the applicant accepts full responsibility for his prior criminal history and recognizes the seriousness of his convictions and that he has never deliberately evaded U.S. immigration laws or authorities. Counsel asserts that the district director failed to consider the applicant's positive factors, including the hardship that will result if he is not permitted to enter the United States. However, the AAO notes that the director's determination that the applicant lacked good moral character was based on the applicant's misrepresentation at the port of entry, not his removal. As discussed above, the applicant's misrepresentations at the port of entry were willfully made and were material to his admission to the United States. Inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act is a negative factor to be considered in rendering a discretionary decision. The director appropriately considered the recency of the applicant's removal only after finding the applicant to be of poor moral character. *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978).

The applicant, in his declaration, states his inability to enter the United States is a real hardship for his extended family, wife and himself. He states that he had a terrible childhood, as a result of which he left home at an early age and fell in with the wrong people. He states that he was out of control and is not even fully aware of the facts surrounding most of his convictions. He states that after he was arrested in 1985 and was facing jail time when he realized that he wanted to change his life. He states that he met Ms. [REDACTED] in the midst of his decision to change and she supported him during the two year jail sentence he served for his 1985 conviction. He states that, in 2002, he was granted a pardon for all of his criminal charges, a process which took three years and required that he establish he was a reformed person. He states that it is important, especially while Ms. [REDACTED] grandmother is still alive, that he be able to attend family reunions in the United States. He states that Ms. [REDACTED] and her family moved to Missoula, Montana, in 1991 and he has since taken many trips to the United States to visit them. He states that he is very close to the family, especially the children. He states that it would be upsetting for him and his wife if he were no longer able to go to Montana to visit Ms. [REDACTED] and her family. He states that it would be devastating to the entire Ewonus family if he, Ms. [REDACTED] children's favorite uncle, were unable to attend the children's high school and college graduations in the United States. He states that Ms. [REDACTED]' parents have a condo in Phoenix, Arizona, where they expect to spend greater amounts of time as they become older and less mobile. He states that Ms. [REDACTED]' parents have indicated their wish to spend Christmases in Phoenix and would be faced with the decision of making the burdensome trip to Canada for Christmas or spending Christmas without him. He

states it would be upsetting to Ms. [REDACTED] if she had to decide each year whether to spend Christmas with him or her parents.

Ms. [REDACTED], in her declaration, states that her immediate and extended family is a close-knit one with extensive ties to the United States. She states that her grandfather was born in the United States and her family is spread out through the United States and Canada. She states that her mother and aunt are currently in the process of joining the Daughters of the American Revolution because their ancestors fought in the Revolutionary War and Civil War. She states that her father and his brothers attended college in the United States and some of her uncles enlisted in the U.S. military during World War II. She states that many of the children of these aunts and uncles currently reside in the United States. She states that every year, in addition to individual vacations, a family trip is organized for those available to take her grandmother from Canada to the United States to visit relatives. She states that her family's most important connection to the United States is Ms. [REDACTED] who lives in Missoula, Montana, where she practices law. She states that the applicant plays an active part in family planning and discussions about the [REDACTED]'s family. She states that he has been able to visit the United States frequently in order to visit and vacation with members of the [REDACTED] family. She states that it has been more than twenty years since the applicant's last conviction and he has been a model citizen ever since. She states that the applicant is good to his family, is hardworking and is helpful to those around him. She states that the applicant received a pardon of all of his convictions with the help of her Uncle [REDACTED] who was an inspector with the Royal Canadian Mounted Police (RCMP). She states that it would be terrible if the applicant were unable to attend family reunions, vacations, Thanksgiving or Christmas dinners in the United States. She states that it would be devastating to her niece and nephew in the United States, as well as the rest of the family, if the applicant were unable to attend their high school or college graduations or important events in their school careers. She states that, in 2001, the applicant was able to drive her to Missoula, Montana, to help her father and mother while her father recovered from quadruple bypass surgery performed in the United States. She states that, due to the superiority of United States medical care, her parents will go to U.S. hospitals for any future major medical procedures and it would be terrible if the applicant were unable to enter the United States to visit them and provide her with comfort during their recoveries.

Ms. [REDACTED]' parents, in their letters, state that their family has a strong connection to the United States and has contributed all that they can to both the United States and Canada. They state that they are a close-knit family who do many things together in the United States and that the applicant merely wishes to be with the family and not to work in the United States. They state that the applicant is a kind and loving husband who is very sensitive and giving. They state that, because the applicant and Ms. [REDACTED] do not have children of their own, Ms. [REDACTED]' children are "their" children and the children's happiness is their number one concern. They state that the applicant and Ms. [REDACTED] are as close to these two children as any parent could be and have been involved in every aspect of their lives since their birth. They state that the applicant should not be kept from being involved in the children's everyday lives and providing them with loving guidance as they grow up.

Ms. [REDACTED] in her letter, states that she is an attorney licensed to practice in the State of Montana. She states that her family has been aware of the applicant's criminal record and that he has completely reformed and become a valued member of their family. She states that the applicant makes a consistent and ideal adult role model for her two children and that, prior to his removal in 2004, the applicant had visited their family in Montana more than 25 times. She states that the applicant's inability to enter the United States weighs heavily on her mind in the event of an emergency, as well as the thought that he may be unable to attend momentous

events in her children's careers. She states that the applicant has not had any legal troubles for years and has a loving, supportive family and a fine career.

A letter from Ms. [REDACTED], a retired inspector with the RCMP, states that the applicant has been continuously employed and has led an exemplary life since he received clemency. Mr. [REDACTED] states that Ms. [REDACTED] siblings are all professionals who come from a close family, that are very supportive of the applicant. He states that the family is proud of their colonial ancestral lineage with the United States and believes that the applicant has turned his life around. Mr. [REDACTED] letter in support of the applicant's pardon states that the applicant works hard and is well-respected by customers and coworkers. It states that the applicant is very honest and forthright. It states that the applicant was not a major drug trafficker and that police personnel regarded him as a minor street trafficker who had not been at it long.

Letters of recommendation from Ms. [REDACTED] extended family state that the applicant is a loyal and caring husband to Ms. [REDACTED]. They state that he has been very supportive of the extended family members who live in New York and Phoenix. They state that he is a positive role model for his niece and nephew in Montana. They state that the applicant should not be a concern for the United States and he is a hardworking and trustworthy man.

Letters of recommendation from the applicant's coworkers state that the applicant is a valued employee with a mature, reliable and capable manner who has made an excellent contribution to the business. They state that that the applicant has a strong work ethic and genuine enthusiasm for his work and has never tried to hide the truth about his criminal history. They state that he deserves to visit his extended family in the United States.

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 in the United States unlawfully. *Id.*

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

[T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] In all other instances

when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

The favorable factors in this matter are the absence of any criminal record since 1985, the applicant's pardon for his criminal convictions, the applicant's steady employment and payment of taxes, and the general hardship to the applicant's spouse's family in the United States.

The AAO finds that the unfavorable factors in this case include the applicant's 2004 expedited removal from the United States, his convictions for being unlawfully at large, theft, breaking, entering and theft, breaking and entering with intent, possession of narcotics, possession of narcotics for trafficking, driving under the influence, and conspiracy to traffic narcotics, and his inadmissibility pursuant to sections 212(a)(2)(A)(I), 212(a)(2)(A)(i)(II), 212(a)(2)(C) and 212(a)(6)(C)(i) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II), 1182(a)(2)(C) and 1182(a)(6)(C)(i), for having been convicted of a crime involving moral turpitude, having been convicted of a controlled substance violation, for being an illicit trafficker of a controlled substance and attempting to enter the United States by willful misrepresentation of a material fact or fraud.

The applicant in the instant case has multiple immigration and criminal violations. While the AAO notes that the applicant's crimes took place more than twenty years prior to the filing of the Form I-212 and that he has been pardoned for these crimes in Canada based on the reformation of his character, the record also establishes that the applicant, in 2004, attempted to gain admission to the United States by willfully misrepresenting a material fact, i.e., that he had a criminal history and had previously been denied entry to the United States. The record indicates that at the time of the applicant's misrepresentation he was aware that he was inadmissible to the United States, having been informed in 2003 that, despite his pardon, his past criminal convictions precluded his entry. Accordingly, the AAO finds the applicant's inadmissibility under section 212(a)(6)(C) of the Act, when coupled with the other unfavorable factors in the present matter, outweighs the favorable factors established by the record.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish 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.