

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



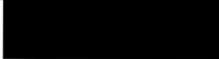
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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 sustained and the application will be approved.

The applicant is a native and citizen of Mexico who, on August 15, 1982, entered the United States without inspection. On September 26, 1994, the applicant filed an Application for Asylum or Withholding of Removal (Form I-589). On August 7, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen son, [REDACTED]. On March 25, 1998, the applicant was placed into immigration proceedings. On June 24, 1998, the immigration judge ordered the applicant removed *in absentia*. On July 6, 1998, a warrant for the applicant's removal was issued. On October 6, 1998, the applicant appeared at Citizenship and Immigration Services' (CIS) Omaha, Nebraska District Office. The applicant testified that she had never been ordered removed from the United States. On the same day, the applicant's Form I-485 was approved. On March 4, 1999, a Notice of Intent to Rescind Lawful Permanent Resident Status was issued because the applicant had failed to comply with the order of the immigration judge and had concealed material evidence from the interviewing officer at the time of her adjustment of status interview. On March 30, 2000, the applicant's lawful permanent resident status was rescinded. On March 14, 2004, the applicant applied for admission to the United States at the San Ysidro, California Port of Entry. The applicant presented a Form DSP-150 Non-Resident Border Crossing Card. The immigration officers determined that the applicant's Form DSP-150 had been fraudulently obtained. The Form DSP-150 was cancelled. The applicant was permitted to withdraw her application for admission and to return to Mexico voluntarily. On November 28, 2006, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 in the United States with her U.S. citizen and lawful permanent resident children.

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated February 12, 2007.

On appeal, the applicant contends that she was not aware of the applications made on her behalf by a notario or that she had been placed in proceedings and ordered removed. She contends that she sincerely believed that she was in a legal status and has tried to obey all of the immigration laws. She contends that she and her children are going through extreme psychological, physical and emotional hardship. *See Form I-290B*, dated February 19, 2007. In support of her contentions, the applicant submits the referenced Form I-290B and copies of documentation previously provided. 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.

- (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 on a 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 of Homeland Security] has consented to the alien's reapplying for admission.

The record reflects that, on June 24, 1998, the applicant was ordered removed from the United States. The AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and, therefore, must receive permission to reapply for admission.

The record reflects that the applicant has a 41-year old son who is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 2000. The applicant has a 42-year old son who is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1997. The applicant has a 36-year old son who is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1999. The applicant has a 46-year old son who is a native and citizen of Mexico who became a lawful permanent resident in 1999. The applicant's sons have a number of children who are all U.S. citizens by birth. The applicant's spouse passed away from respiratory failure in 2001 at the age of 64. The applicant is in her 60's.

The AAO now turns to a consideration of positive and adverse factors in the present case.

The applicant, on appeal, asserts that she was deceived by the person who prepared her immigration applications and believed she was merely applying for status through her son. She asserts that she was not aware of the filing of the Form I-589. The applicant asserts that she was not aware that she had been ordered removed or had violated any immigration laws. However, the Form I-589 bears the applicant's signature and does not indicate that it was prepared for her by another person.

The applicant, on appeal, asserts that she and her children are currently going through extreme psychological, physical and emotional hardships and it has been very difficult to be separated from her children and grandchildren.

A psychological report written by a licensed marriage and family therapist, based on one interview with the applicant's 41-year old son, indicates that the applicant's health is fragile due to her diabetes and high blood pressure and that her son is concerned about her inability to care for herself. The report diagnoses the applicant's son with dysthymic disorder and generalized anxiety disorder and indicates that he will continue to suffer until he is reunited with his mother. The report states that the son's prognosis is devastating if the family continues to be separated. The report states that the applicant's son and his family will endure a severe emotional impact that will be detrimental to the son's health. It is recommends that he undergo psychiatric evaluation to determine if he can benefit from antidepressants and psychological treatment to help address his emotional symptoms.

A psychological report written by a licensed marriage and family therapist, based on one interview with the applicant's 36-year old son, indicates that he is also concerned about the applicant's deteriorating health and her inability to care for herself. The report diagnoses the applicant's son with dysthymic disorder and generalized anxiety disorder and indicates that he will continue to suffer until he is reunited with his mother. The report states that the son's prognosis is devastating if the family continues to be separated. The report states that the applicant's son and his family will endure severe emotional and financial impacts that will be detrimental to the son's health. It recommends that he undergo psychiatric evaluation to determine if he can benefit from antidepressants and psychological treatment to help address his emotional symptoms.

The record also includes letters from the applicant's son's employers who report that the applicant is extremely important to her sons and that their work performance has been affected as a result of her absence. A letter from a member of the church attended by the applicant's 41-year old son states that, of the applicant's children, he is the most affected by his mother's absence and appears disconnected from everyday life. The record does not contain any medical documentation to establish the applicant suffers from diabetes.

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.*

As established by the record, the favorable factors in this matter are the applicant's three U.S. citizen sons, one lawful permanent resident son, numerous U.S. citizen grandchildren, an approved immigrant petition for alien relative, lack of any criminal record and the hardship that her absence has caused two of her adult sons.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry; her failure to appear before an immigration judge; her failure to comply with an order of removal; her attempt to reenter the United States by presenting a fraudulently obtained document; and her extended unlawful presence in the United States.

While the applicant has multiple immigration violations that cannot be condoned, the AAO finds that, given all of the circumstances, the applicant has established that the favorable factors in the present case outweigh the negative and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal is sustained.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. The applicant has met that burden. Accordingly, the appeal will be sustained and the application will be approved.

ORDER: The appeal is sustained. The application is approved.