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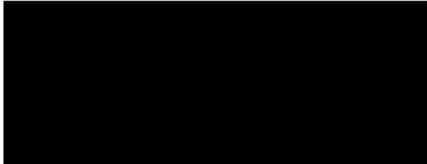
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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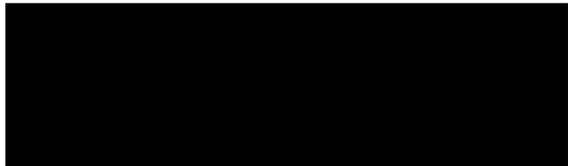
IN RE:

Applicant:



APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, Buffalo, New York, and 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 March 14, 2005, at the Lewiston, New York, Port of Entry applied for admission into the United States. The applicant was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa. Consequently, on the same day 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). The applicant is inadmissible under 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 travel to the United States as a non-immigrant visitor.

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 June 27, 2006.

On appeal, counsel submits a brief, in which she states that the applicant was assigned to provide long-term support for a project in the United States undertaken by a Canadian subsidiary of a U.S. company that employed the applicant. Counsel states that the Canadian company periodically sent the applicant to the United States for observational purposes. Counsel further states that during this assignment, the applicant entered the United States several times and was always paid through the Canadian office and took directions from his Canadian supervisors. In addition, counsel states that the applicant did not perform any work in the United States on behalf of his company. Counsel states that the applicant acted as a constant "shadow" to an experienced executive and interim manager of the project. Furthermore, counsel states that although the applicant attended meetings and sat in on various conference calls, he had no direct participation or input. Counsel states that during the applicant's interview at the port of entry, he was nervous and frightened, and failed to provide a clear explanation of the purpose of his trip. Counsel states that the applicant has no criminal record, he previously visited the United States on numerous occasions without any problem, and his problems began after he started working with the Canadian subsidiary. In addition, counsel states that after his removal, the applicant has not attempted to reenter the United States and is addressing his immigration issues in a responsible manner. Counsel further states that the applicant's statements during his interview shed very little light on the true nature of his employment related visits to the United States. Counsel notes that with the filing of the Form I-212, the applicant submitted a letter from his supervisor who stated that the applicant was not qualified to perform any of the duties he mentioned in his statement at the port of entry. Furthermore, counsel states that the District Director ignored the fact that the applicant's mother and brother reside in the United States and are in the process of obtaining lawful permanent resident status. Counsel states that the applicant's inability to enter the United States has had an enormous impact on his professional and personal life. Finally, counsel states that given the length of time the Form I-212 was pending and the fact that the applicant remains unable to visit his mother and brother, she requests that the decision to deny the Form I-212 be reconsidered.

The record of proceedings contains a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867A) in which the applicant admitted under oath that he was entering the United States to perform work, and not for training. In addition, the applicant stated that he was told, by his company, to say that he was entering the United States for training and that the attorneys of his company told him that if he would tell the immigration officer that he was entering for training and knowledge transfer he would be fine,

and he did not need a nonimmigrant "L" visa. The AAO notes that the applicant read his statement before he initialed each page and signed it. The statement is very clear and detailed, leaving no ambiguity regarding the purpose of his trip.

Section 212(a)(9)(A) 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.

(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.

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; (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 reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

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.*

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 AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his mother and brother and the absence of a criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's disregard for immigration laws by willfully misrepresenting a material fact while applying for admission into the United States, and his numerous entries in order to perform unauthorized work. In addition, the AAO notes that on May 24, 2004, the applicant was denied admission into the United States because it was determined that his intent was to work in the United States. On the same date, he was advised by immigration officials to apply for the proper documentation in order to be allowed into the United States to perform his duties on behalf of his Canadian employer. He never followed the instructions provided.

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 eligibility 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.