

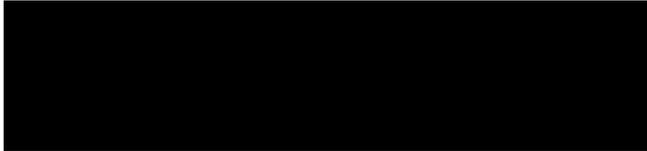


U.S. Citizenship
and Immigration
Services

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FILE:



Office: DENVER, COLORADO

Date:

MAR 12 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)(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.

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, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who entered the United States without a lawful admission or parole on February 5, 1989. The Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS) apprehended the applicant. On February 6, 1989, an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was served on the applicant and she was released on a \$500 bond. On September 25, 1990, the applicant failed to appear for the deportation hearing and she was subsequently ordered deported, *in absentia*, by an immigration judge pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act), for having entered the United States without inspection. On November 28, 1990, a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that she appear at the Los Angeles District Office in order to be removed from the United States. The applicant failed to appear as requested. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of 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 remain in the United States and reside with her U.S. citizen sister and Lawful Permanent Resident (LPR) son.

The District Director determined that the applicant was not entitled to file a Form I-212 and denied the application accordingly. *See District Director's Decision* dated March 30, 2006.

On appeal, the applicant states that she failed to appear for her hearing because she never received a notice for a court hearing. The applicant states that she moved out of her brother's house and does not know who signed for the certified letters regarding her deportation hearing. The applicant further states that she found out about her deportation order after she appeared for her adjustment of status interview. Finally, the applicant states that her children help her financially and she will not be able to support herself in Mexico.

A review of the record of proceeding reveals that the applicant was personally served with an OSC on February 6, 1989. The AAO notes that all correspondence was forwarded to the address provided to the Service on the day the applicant was apprehended and a bond was posted on her behalf. It was the applicant's responsibility to assure that her true and correct address was provided to the office of the immigration judge. The applicant failed to appear for a deportation hearing because she failed to inform the Service of her change of address as required by section 265(a) of the Act. The regulations at 8 C.F.R. § 103.5a(b) discuss service by mail and state that service by mail is complete upon mailing.

The AAO finds that the District Director erred in his decision stating that the applicant is not entitled to file a Form I-212. The applicant is eligible to file a Form I-212 pursuant to the regulation at 8 C.F.R. § 212.2(g) which states in pertinent part.

(g) Other applicants.

- (1) Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section must file Form I-212. This form is filed with either:

(i) the district director having jurisdiction over the place where the deportation or removal proceedings were held

(2) If the applicant is physically present in the United States but is ineligible to apply for adjustment of status, he or she must file the application with the district director having jurisdiction over his or her place of residence.

To recapitulate, on September 25, 1990, the applicant was ordered deported from the United States. Therefore, the applicant is inadmissible under section 212(a)(9)(A) of the Act and must receive permission to reapply for admission.

The AAO conducts the final administrative review and enters the ultimate decision for CIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case *de novo* as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in *de novo* review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens 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 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 the Secretary of 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 deterring 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, her U.S. citizen sister and LPR son, and the absence of a criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial illegal entry into the United States, her failure to appear for deportation proceedings, her failure to inform the Service of her change of address as required by law, her unauthorized employment and her lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee, supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

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 factors.

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.