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



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 29 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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont 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 dismissed.

The applicant is a native and citizen of Guatemala who, on April 28, 1994, filed a Request for Asylum in the United States (Form I-589). On May 30, 1996, the applicant appeared at the New York Asylum Office and testified that she had entered the United States on February 14, 1992, without inspection. On June 10, 1996, the applicant's Form I-589 was referred to the immigration judge and she was placed into immigration proceedings. On October 17, 1996, the immigration judge ordered the applicant removed *in absentia*. On November 14, 1996, a warrant for the applicant's removal was issued. On January 21, 2005, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(ii) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien having been ordered removed from the United States. 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.

The acting director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Acting Director's Decision* dated January 24, 2006.

On appeal, the applicant contends that she deserves reconsideration as she is a person of good moral character and would suffer hardship if she were to return to her home country. *See Attachment to Form I-290B*, dated February 10, 2006. In support of her contentions, the applicant submits the referenced Form I-290B and letters of recommendation. 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 applicant failed to appear at her immigration hearing and was ordered removed on October 17, 1996. The applicant failed to comply with the order of removal until she departed the United States in 2004 for a period of one month. The applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to January 21, 2005, the date on which she filed the Form I-212. The AAO finds that the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act and must receive permission to reapply for admission.

The record reflects that the applicant is in her 30's. The applicant has been employed as a housekeeper in the United States without authorization.

On appeal, the applicant asserts that she is a person of good moral character and is not a criminal. She asserts that she has nothing to go back to in Guatemala and would suffer hardship there. She states that she would like to legalize her situation in the United States. However, there is no evidence in the record to establish that the applicant has any pending immigrant or nonimmigrant petitions. The applicant, in a response to a Notice of Action, dated October 12, 2005, states that she departed the United States in 2004 but returned because she could not find a job to support her children. She states that she came to the United States with her children to give them a better future. She states that Guatemala has a lot of poverty and crime and she wants the United States to give her an opportunity to legalize her family. She states that she works as a housekeeper and earns cash to support her family.

On appeal, the applicant asserts that she has never been removed from the United States. She asserts that an immigration officer told her that he would send her an appointment in the mail. She asserts that she never received notification by mail or telephone. She states that she learned of the existence of the removal order from an immigration attorney who had attempted to file immigration papers on her behalf. However, the record contains a signed certified mail return receipt requested (CMRRR) indicating that the notice of the applicant's immigration hearing date and time was received on June 21, 1991, at what was then the applicant's address of record.

Letters of recommendation from the applicant's friends state that she is a reliable, honest, responsible and hard-working person.

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.*

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.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; her failure to appear at an immigration hearing; her failure to comply with a removal order; her illegal reentry into the United States after having been ordered removed; and her extended unlawful presence and employment in the United States.

The applicant in the instant case has multiple immigration violations. The totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the laws of the United States, and that the favorable factors in the present matter are outweighed by the unfavorable factors.

The AAO notes that the applicant is also inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for entering the United States illegally after having been ordered removed.

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