



U.S. Citizenship
and Immigration
Services

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A14

FILE:



Office: CALIFORNIA SERVICE CENTER
[redacted]
consolidated therein]

Date: OCT 23 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) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 after removal was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who initially entered the United States without inspection in 1995, based on the applicant's Biographic Information (Form G-325A), dated February 13, 2001. In 1996, the applicant returned to El Salvador. On February 8, 1997, the applicant married [REDACTED] in El Salvador. On April 17, 1997, the applicant attempted to enter the United States, by presenting a fraudulent Salvadoran passport in someone else's name. On the same day, the applicant was removed to El Salvador. Sometime before February 9, 1998, the date the applicant was arrested for driving while intoxicated, the applicant reentered the United States without inspection. In the applicant's Form G-325A, the applicant states he reentered the United States sometime in 1998, returned to El Salvador in 1999, and again reentered the United States in April 2000. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He now 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 with his naturalized United States citizen wife and United States citizen children.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for being ordered removed under section 240 or any other provision of law and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated July 13, 2006.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 continuous territory, the Attorney

General [now, Secretary, Department of Homeland Security] has consented to the aliens' 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, and (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 from being present in the United States without lawful admission or parole.

On appeal, the applicant, through counsel, states the Director failed "to consider all of the hardship factors including country conditions...The decision also neglects completely that there are 2 U.S. citizen children affected by this decision." *Form I-290B*, filed August 11, 1006. Counsel states that, "El Salvador is a Temporary Protected Status designated country due to social unrest and extreme poverty caused by twelve years of civil war followed by the natural disaster of earthquakes. This is not a country to which [the applicant] could return and his wife and child could be severely harmed if they were to go to El Salvador to live...[The applicant] has applied for Temporary Protected Status." *Statement in Support of Appeal*, dated August 6, 2006. The AAO notes that there is no indication in the record that the applicant has applied for Temporary Protected Status (TPS). Additionally, the AAO notes that the applicant has returned to El Salvador at least twice in the last eleven (11) years. Counsel claims that the applicant has "numerous very strong equities which do outweigh the transgression committed by [the applicant]." *Id.* The strong equities include the applicant's lengthy period of time in the United States, no arrest record, working and supporting his family, and that he has been gainfully employed. *See Id.* The AAO notes that the applicant has been working without authorization for numerous years and this is an unfavorable factor. Additionally, the AAO notes that the applicant was aware that returning to the United States before April 17, 2002, which was five (5) years from the date of his removal, would be in violation of the United States immigration laws, and he still reentered the United States in 1998 and 2000. The AAO finds that the applicant's unauthorized presence in the United States is an unfavorable factor. Additionally, the AAO notes that the applicant has a criminal record. The applicant's wife states that they are both "employed in order to support [their] family. Without [the applicant's] assistance [she] would be unable to maintain [their] family." *Declaration by* [REDACTED] dated January 12, 2004. The applicant's wife states her son "would be devastated if [the applicant] were no longer around. [They] could not live in El Salvador since [they] would be unable to find employment, and housing. [Her] son traveled once to El Salvador in 1998, he got extremely ill due to the change." *Id.* The AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's spouse and son, but it will be just one of the determining factors.

The record of proceedings reveals that on April 17, 1997, the applicant attempted to enter the United States by presenting a fraudulent Salvadoran passport in someone else's name. On the same day, the applicant was ordered removed from the United States. Based on the applicant's previous order of removal, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

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.*

The favorable factors in this matter are the applicant's family ties to United States citizens, his wife and children, and general hardship they may experience.

The AAO finds that the unfavorable factors in this case include the applicant's repeated entries into the United States without inspection, his attempt at entering the United States by presenting a fraudulent passport, his criminal record for driving while intoxicated and aggravated assault, and periods of unauthorized presence and employment.

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 that 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.