

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H14

FILE:



Office: HARLINGEN, TEXAS

Date:

SEP 11 2007

IN RE:

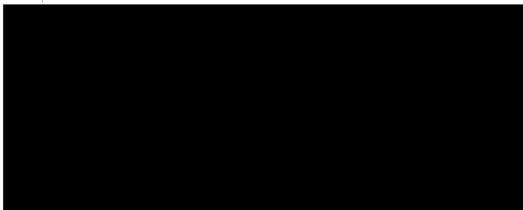
Applicant:



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 District Director, Harlingen, Texas, 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 initially entered the United States on April 10, 1965 on a B-2 nonimmigrant visa, with authorization to remain in the United States until June 30, 1965. On November 22, 1965, the applicant departed the United States. On September 25, 1966, the applicant entered the United States on a SA-1 immigrant visa. On May 29, 1986, the applicant was convicted of conspiracy to make a firearm and was sentenced to jail for twenty-two (22) months. On November 18, 1991, the applicant was convicted of money laundering and sentenced to jail for twenty-four (24) months and three (3) years probation. On February 18, 1993, an immigration judge ordered the applicant deported to Mexico. On the same day, the applicant was deported from the United States and subsequently lost his resident status. On February 25, 1993, the applicant reentered the United States without inspection. On September 13, 1995, the applicant was convicted of being an alien unlawfully present in the United States after having been arrested and deported, who whose deportation was subsequent to a felony conviction, in violation of 8 U.S.C. §§ 1326(a) and 1326(b)(1). Based on that conviction, the applicant was sentenced to fifteen (15) months in jail and two (2) years probation. On April 23, 1996, an immigration judge ordered the applicant deported from the United States. On May 10, 1996, February 13, 1997, and October 18, 2000, Warrants of Deportation (Form I-205) were issued against the applicant. 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)(I). 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 wife and children.

The District Director determined that the applicant is inadmissible pursuant to sections 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), and 212(a)(2)(I)¹ of the Act, 8 U.S.C. § 1182(a)(2)(I),² and that the unfavorable factors in the applicant's case outweighed the favorable factors. The District Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *District Director's Decision*, dated January 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-

¹ The District Director stated the applicant was inadmissible under section 212(a)(I)(i) of the Act, for money laundering; however, there is no section 212(a)(I)(i) in the Act. The AAO notes that section 212(a)(2)(I) of the Act deals with the money laundering ground of inadmissibility.

² The AAO notes that the District Director additionally found the applicant inadmissible under former section 241(a)(2)(C) of the Act; however, this is a ground of deportability, not inadmissibility.

- (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 aliens 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 aliens' 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 District Director "misstates several grounds of inadmissibility" in his decision. *Form I-290B*, filed February 10, 2006; *see also Brief in Support of Appeal*, pages 4-7, filed February 10, 2006. The AAO notes that the District Director found the applicant inadmissible under several grounds of inadmissibility, and some of the sections cited by the District Director were incorrect; however, the AAO finds that the applicant is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being ordered removed under section 240 or any other provision of law. Counsel states that on September 18, 1997, the applicant "was placed on an order of supervision" and "has reported monthly to the supervising immigration officer since that date." *Brief in Support of Appeal*, page 3, *supra*. The AAO notes that the applicant filed appeals of the immigration judge's February 18, 1993 decision all the way to the Fifth Circuit Court of Appeals (Fifth Circuit). On July 10, 2000, the Fifth Circuit upheld the February 18, 1993 decision. Counsel states that "[t]hroughout the course of [the] federal litigation, [the applicant] complied with his order of supervision and reported monthly." *Id.* The AAO notes that even though the applicant reported monthly to the immigration officer, he has still resided in the United States without permission since at least July 20, 2000, and the AAO finds this period of unauthorized presence to be an unfavorable factor. Furthermore, the applicant failed to abide by an immigration judge's order of deportation, he failed to turn himself in or depart the United States, and he has been residing and working in the United States without authorization for many years. Counsel states the applicant "was involved in serious non-violent crimes over a decade ago. He returned to the United States unlawfully after deportation. He has

strictly complied with his order of supervision for over eight years and has had no significant police contact in over a decade. He is a homeowner who has been steadily employed by the same company for eight years. He has extensive family in the United States in the form of his USC wife and sons." *Id.* at 9; *see also letter from [REDACTED] Oates Oilfield Construction Co.*, dated November 22, 2000 ("[The applicant] is a valued addition to this company. Having been here close to two years as head mechanic, [she] can report that his work ethic is excellent. He is dependable, courteous, and trustworthy."). The applicant submitted medical documentation establishing that his wife suffers from right cervical radiculopathy, mixed hyperlipidemia, chest pain, and she is mildly overweight. The AAO notes that regarding the applicant's wife's medical conditions, there was nothing from a doctor indicating exactly what assistance is needed and/or given by the applicant. Additionally, there was no documentation submitted establishing that the applicant's wife could not receive treatment for her medical conditions in Mexico. Further, there is no indication that the applicant's wife has to remain in the United States to receive her medical treatments. Additionally, 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 children, but it will be just one of the determining factors. The AAO notes that the applicant's spouse did not provide a statement or an affidavit regarding what, if any, hardship she would suffer if the applicant were removed from the United States. Additionally, there was no documentation submitted that the applicant provides any financial assistance to his wife and children.

The record of proceedings reveals that February 18, 1993, an immigration judge ordered the applicant deported to Mexico. On the same day, the applicant was deported from the United States. On February 25, 1993, the applicant reentered the United States without inspection. On April 23, 1996, an immigration judge ordered the applicant deported from the United States. On May 10, 1996, February 13, 1997, and October 18, 2000, Warrants of Deportation (Form I-205) were issued against the applicant. Based on the applicant's previous orders 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, general hardship they may experience, and the approval of a petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's entry without inspection, his failure to abide by an order of removal, his significant criminal record, 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.