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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H4

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 1 2 2007
[consolidated therein]
[consolidated therein]

IN RE: Applicant: [redacted]

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:

[redacted]

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 sustained and the application approved.

The applicant is a native and citizen of Mexico who entered the United States without inspection on January 23, 1991. On June 26, 1991, an immigration judge granted the applicant voluntary departure. The applicant failed to depart the United States and a Warrant of Deportation (Form I-205) was issued on October 2, 1991. On November 15, 1991, the applicant was deported from the United States. In November 1991, the applicant reentered the United States without inspection. 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). She 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 her lawful permanent resident husband and four United States citizen children.

The Director determined that the applicant is inadmissible pursuant to 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 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 June 27, 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 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, asserts that the Director misconstrued the holding *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), and "failed to even consider, much less analyze the factual basis of Applicant's claim." *Form I-290B*, filed July 31, 2006. Counsel contends that the applicant's case is distinguishable from *Lee*, in that the applicant "was deported on one single occasion...[and] [b]oth her voluntary appearance and suggestion of misunderstanding regarding the deportation should[, pursuant] to Lee's paradigm, be recognized as positive factors." *Brief in Support of Appeal*, pages 3-4, dated July 25, 2006. The AAO notes that the applicant's "voluntary appearance in response to a written notice to appear" is a positive factor; however, two days after the applicant was deported from the United States in November 1991, she reentered without inspection, and has been residing in the United States since that time without authorization, which is an unfavorable factor. *Id.* at 3. The applicant claims that she did not follow the voluntary departure order because she was pregnant at the time, and on November 15, 1991, she was not deported from the United States, because she paid $25.00 to leave the United States. *Declaration by* [redacted], dated November 3, 2005. The AAO notes that there was no documentation submitted establishing that the applicant voluntarily departed the United States, and even if the applicant does believe that she voluntarily departed the United States, it does not negate the fact that the applicant was ordered deported from the United States after she failed to abide by the immigration judge's order of voluntary departure. Counsel claims that the applicant provides "essential care, guidance and love to her disabled permanent resident husband and United States citizen children." *Brief in Support of Appeal*, page 4, *supra*. The AAO notes that no documentation was submitted establishing that the applicant's husband is disabled. The AAO finds that the applicant's daughter, Catalina, is enrolled in special education classes, and the applicant "has been active in the educational process" of her daughters. *See letter from* [redacted], *School Counselor,* [redacted] *Intermediate School*, dated November 1, 2005. [redacted] states the applicant "is a valued member of the community and an essential contributor to her own family. [The applicant] works to provide part of the income necessary to sustain her family. Without [the applicant's] financial contribution, her husband will be less able to meet his family's basic needs." *Letter from* [redacted], dated September 23, 2005. The applicant's husband claims that the applicant "provides the major part of [their] household." *Declaration by* [redacted], dated 9, 2003. The AAO notes that based on the submitted Wage and Tax Statements (Form W-2) and U.S Individual Income Tax Returns (Form 1040A), it appears that the applicant's husband is the primary wage earner in the family. 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 record of proceedings reveals that on June 26, 1991, an immigration judge granted the applicant voluntary departure. The applicant failed to depart the United States and a Form I-205 was issued on October 2, 1991. On November 15, 1991, the applicant was deported from the United States. In November 1991, the applicant reentered the United States without inspection. Based on the applicant's previous order of deportation, 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 a lawful permanent resident and citizens of the United States, her husband and children, general hardship they may experience, no criminal record, community involvement, the approval of a petition for alien relative, and letters of recommendation from friends, her employer, and other members of the community.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, her failure to abide by an order of voluntary departure, her illegal entry into the United States subsequent to her November 15, 1991 deportation, and periods of unauthorized presence and employment.

While the applicant's actions cannot be condoned, the AAO finds that given all the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.