



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER  
[consolidated therein]

Date: APR 08 2008

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Based on the applicant's sworn statement given on November 4, 1996, the applicant is a native and citizen of Ecuador who initially entered the United States without inspection on October 5, 1987. Based on an application for an immigration benefit, the applicant stated he entered the United States without inspection on February 15, 1988. On February 18, 1993, the applicant's son [REDACTED], was born in New York. On February 17, 1995, the applicant married [REDACTED], a citizen and national of Ecuador, in New York. On August 28, 1996, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). The applicant's Form I-589 was denied. In October 1996, the applicant departed the United States. On November 4, 1996, the applicant attempted to enter the United States by presenting a counterfeit ADIT stamp, claiming to a lawful permanent resident. On November 5, 1996, an immigration judge in Miami, Florida, ordered the applicant excluded and deported from the United States. On the same day, the applicant was deported from the United States. At some point, the applicant reentered the United States without inspection. On November 13, 1996, an Order to Show Cause and Notice of Hearing (OSC) was issued against the applicant. On March 18, 1997, an immigration judge in New York, New York, administratively closed the applicant's case. At some point, the applicant's New York immigration case was reopened. On July 15, 1997, an immigration judge in New York, New York, ordered the applicant deported *in absentia*. The applicant failed to depart the United States as ordered. On May 19, 1998, a Warrant of Removal/Deportation (Form I-205) was issued for the applicant. On June 4, 1998, the applicant reentered the United States without inspection.<sup>1</sup> On December 15, 1998, the applicant's daughter, [REDACTED] was born in New York.<sup>2</sup> On November 30, 2004, the applicant's daughter, [REDACTED] was born in New York. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), and 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). 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 Ecuadorian spouse and three United States citizen children.

The director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for being unlawfully present in the United States after previous immigration violations, and section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A), for being previously removed from the United States. 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 August 11, 2006. The AAO finds that the applicant is also inadmissible under section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for being present in the United States

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<sup>1</sup> The AAO notes that the applicant's Social Security Statement establishes that the applicant worked in the United States in 1997.

<sup>2</sup> The AAO notes that the applicant is not listed as [REDACTED]'s father on her birth certificate.

without being admitted or paroled and for attempting to obtain admission into the United States by fraud, respectively.

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.

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.- Any alien who-

- (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
- (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

Section 212(a)(6). Illegal entrants and immigration violators.-

(A) Aliens present without admission or parole.-

(i) In general.- An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the [Secretary], is inadmissible.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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 states that after he was removed from the United States on November 5, 1996, the Service “told [him] that as a punishment [he] should not return to the USA for one year.” *Statement from the applicant*, dated August 23, 2006. The applicant claims that he “return[ed] to the USA in June 1998.” *Id.* However, the AAO notes that the applicant submitted his Social Security Statement which establishes that the applicant was working in the United States without authorization in 1997. The applicant states that he is “the father of three US born children, ages 13, 7 and 2 years. [He is] the beneficiary of an approved Labor Certification.” *Statement from the applicant, supra.* The AAO notes that there is no evidence in the record that the applicant is the beneficiary of an approved Labor Certification. The applicant states he is the only support for his children and wife. *Statement from the applicant*, dated July 16, 2005. The AAO notes that all the years that the applicant has been employed and residing in the United States has been without authorization and that is an unfavorable factor. Additionally, the AAO notes that there was no documentation in the record establishing that the applicant is the primary wage earner in the family or that the applicant’s family would suffer economically without the applicant. Regarding the hardship the applicant’s family may face, 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 family, but it will be just one of the determining factors.

The record of proceeding reveals that on November 5, 1996, an immigration judge ordered the applicant excluded and deported from the United States. On the same day, the applicant was deported from the United

States. At some point, the applicant reentered the United States without inspection. On July 15, 1997, an immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States as required, and a Form I-205 was issued for the applicant. Based on the applicant's previous deportation and 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 children, general hardship they may experience, and no criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his use of a counterfeit ADIT stamp in order to obtain entry into the United States, his illegal reentries into the United States subsequent to his November 5, 1996 deportation and his self-deportation in 1997 or 1998, and his lengthy 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.