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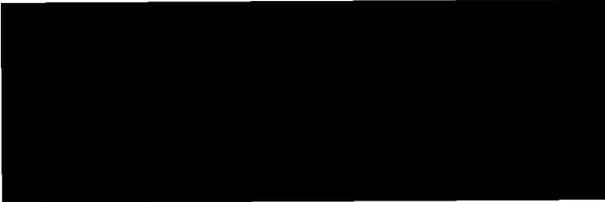
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U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

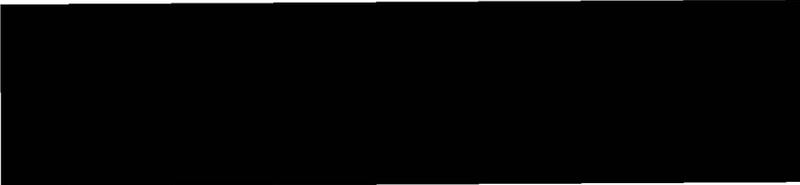
HL4



FILE: Office: CALIFORNIA SERVICE CENTER Date: **APR 25 2008**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 AAO notes that on appeal, the applicant, through counsel, requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed March 8, 2007. The record contains no evidence that a brief or additional evidence was filed within 30-days. On April 1, 2008, the AAO sent counsel a facsimile requesting evidence of the brief and/or additional evidence, or a statement by counsel that neither a brief nor evidence was filed; however, the AAO received no reply from counsel. Therefore, the record must be considered complete.

The applicant is a native and citizen of Mexico. On August 2, 1978, the applicant's son, [REDACTED], was born in Texas. On May 20, 1990, the applicant's son, [REDACTED], was born in Mexico. On June 10, 1991, the applicant initially entered the United States by presenting a Border Crosser Card. At some point, the applicant departed the United States. On July 10, 1997, the applicant entered the United States without inspection. On January 14, 1998, the applicant's wife, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On September 27, 2002, the applicant's Form I-130 was denied because the applicant failed to provide evidence of his divorce from his first wife. On June 21, 2002, the applicant filed an Application for Asylum and/or Withholding of Removal (Form I-589). The applicant's Form I-589 was referred to an immigration judge. On August 2, 2002, a Notice to Appear (NTA) was issued against the applicant. The applicant withdrew his Form I-589 and filed an Application for Cancellation of Removal (Form EOIR-42B) on July 25, 2003. On April 5, 2004, an immigration judge granted the applicant voluntary departure until August 3, 2004. On April 21, 2004, the applicant's United States citizen son, [REDACTED], filed a Form I-130 on behalf of the applicant. On July 2, 2004, the applicant, through counsel, filed a motion to reopen the immigration judge's decision. On August 3, 2004, the applicant, through counsel, filed a motion for stay of removal. On the same day, an immigration judge denied the applicant's motion to reopen and stay of removal. **The applicant failed to depart the United States.** On August 10, 2005, a Warrant of Removal/Deportation (Form I-205) was issued. On the same day, the applicant was removed from the United States. 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), and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(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 lawful permanent resident mother and United States citizen son.

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 February 13, 2007.

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

(A) Certain alien previously removed.-

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(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.

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, 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, through counsel, contends that the "Director erred in denying the Applicant's [Form I-212]...The Director failed to consider the Applicant's family ties such as his LPR mother, and U.S. citizen son, hardship to the Applicant's family, Applicant's remorse and reformation, length of residency in the

United States, etc.” *Form I-290B, supra*. The AAO notes that the applicant stated he initially entered the United States with his Border Crossing Card on June 10, 1991, and then reentered the United States without inspection on July 10, 1997. Therefore, the applicant was unlawfully present in the United States July 10, 1997 until June 21, 2002, when he filed his Form I-589. The applicant claims that “all [his] family resides in the United States of America. It would be very painful for [his] family and for [him] to be away from each other. All [his] brothers, sisters, grandchildren reside in the USA. It is especially hard for [his] mother because she needs [him] more than anything else.” *Letter from the applicant*, dated November 1, 2005. The applicant’s mother states that she is “in deep despair because [she and the applicant] have always been close together, as [she] depend[s] on him in everything, from morally to financially.” *Letter from [REDACTED]* dated November 22, 2005. The applicant’s mother states “[e]ver since [her] son is away from [her], [she feels] a very big emptiness in [her] life because [she] miss[es] him a lot, sometimes [she] feel[s her] life does not have any sense anymore without [her] son being close to support [her] as always.” *Id.* The applicant’s son states he is “very sad that [the applicant] is not in this country because he always has been with [him], and [they] have never been separated for more than a couple of days; as a matter of fact, [they] work together...[The applicant] is a hard working and intelligent person, which [sic] constantly strive to better his family and his own life style.” *Letter from [REDACTED]*, dated October 25, 2005. Counsel claims that the applicant is “primary financial and patriarchal support of the family: he has – in the past – provided financial stability, support, shelter, food, clothing, care, and love.” *Brief attached to Form I-212, page 2, supra*. The AAO notes that the applicant was employed in the United States without authorization and that is an unfavorable factor. Additionally, 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 mother and son, but it will be just one of the determining factors.

The record of proceeding reveals that on July 10, 1997, the applicant entered the United States without inspection. On April 5, 2004, an immigration judge granted the applicant voluntary departure. The applicant failed to depart the United States as ordered. On August 10, 2005, a Form I-205 was issued, and the applicant was 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 a lawful permanent resident and a United States citizen, his mother and son, general hardship they may experience, letters of recommendations, and a history of paying taxes.

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, and periods of unauthorized employment and presence.

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