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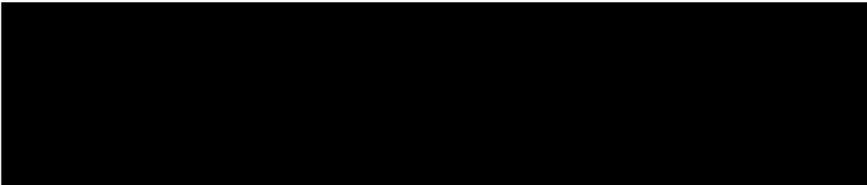
Applicant:



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 Acting District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who initially entered the United States on December 11, 1992, on a B-2 nonimmigrant visa, with authorization to remain in the United States until February 11, 1993. On August 12, 1993, the applicant filed a Request for Asylum in the United States (Form I-589). On July 9, 1996, an immigration judge granted the applicant voluntary departure. The applicant failed to depart the United States as required. On January 4, 1999, the applicant's employer filed a Petition for Alien Worker (Form I-140) on behalf of the applicant. On February 12, 1999, the applicant's Form I-140 was approved. On February 24, 1999, a Warrant of Removal/Deportation (Form I-205) was issued. 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.

The Acting District Director determined that the applicant is inadmissible pursuant to sections 212(a)(9)(A) 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. The Acting District Director found that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Form I-212 accordingly. *Acting District Director's Decision*, dated November 8, 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, states that “the so-called unfavorable factor of failure to comply with the immigration judge’s order to depart voluntarily is forgiven by law and embodied in the applicable regulations.” *Appeal Brief*, page 3, filed December 8, 2006. The AAO notes that the applicant’s failure to abide by the immigration judge’s order has not been “forgiven” and demonstrates the applicant’s lack of respect for United States immigration laws. Additionally, the applicant’s years of unauthorized presence are an unfavorable factor. Counsel states the applicant has demonstrated “exemplary moral character...[and] has consistently provided volunteer services to his community.” *Id.* at 4-5. The AAO notes that the applicant submitted a letter establishing that the applicant and his wife have been “active [redacted] volunteers...[and they] have been active members...for the past 5 years.” *Letter from [redacted]* dated October 15, 2006. Additionally, the applicant and his wife “render volunteer services at the Hindu American Temple and Cultural Center...on regular basis.” *Letter from [redacted] Hindu American Temple and Cultural Center*, dated October 10, 2006. Counsel states the applicant “has always filed his income tax returns when he is required.” *Appeal Brief*, page 4, *supra*. The AAO notes that the applicant submitted tax returns from 2002 through 2005. However, the AAO finds that the applicant has been employed in the United States without authorization, which is an unfavorable factor. [redacted] states the applicant “is under [his] care for accelerated hypertension, diabetes, and low back pain since April 1998. The [applicant] is also treated for bilateral carotid bruit and peripheral arterial disease. He needs regular monitoring of his sugar and blood pressure check-up. He is advised not to undertake long journeys, until such time his condition improves.” *Letter from [redacted]* [redacted] dated October 13, 2006. The AAO notes that there was no documentation submitted establishing that the applicant could not receive treatment for his medical conditions in India or that the applicant has to remain in the United States to receive his medical treatments. Counsel states that the applicant’s wife “has been living in the United States with her husband and would be eligible for derivative lawful permanent residence status by virtue of the approved I-140 petition but for the rejection of the applicant’s Form I-212.” *Appeal Brief*, page 5, *supra*. The AAO notes that the applicant’s wife is also in the United States without any legal standing and her inability to remain in the United States is not a hardship.

The record of proceedings reveals that on July 3, 1997, an immigration judge granted the applicant voluntary departure. The applicant failed to depart the United States and a Form I-205 was issued for the applicant on February 24, 1999. 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 approval of a petition for alien worker, no criminal record, a history of paying taxes, and letters of recommendations.

The AAO finds that the unfavorable factors in this case include the applicant's failure to abide by an order of voluntary departure, failure to abide by an order of deportation, 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.