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U.S. Citizenship
and Immigration
Services

714

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

FEB 20 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, California Service Center, 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 without inspection on April 3, 1989. On May 3, 1994, the applicant filed a Request for Asylum in the United States (Form I-589). On November 8, 1994, the applicant's Form I-589 was denied and referred to an immigration judge. On the same day, an Order to Show Cause and Notice of Hearing (OSC) was issued against the applicant. On April 4, 1995, an immigration judge ordered the applicant deported *in absentia*. The applicant failed to depart the United States as ordered. On May 10, 1995, a Warrant of Deportation (Form I-205) was issued for 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), and section 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 United States citizen children.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for being ordered removed under section 240 or any other provision of law. 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 4, 2007.

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.

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 “[s]ince [his] arrival in the US in 1989 [he has] never departed on any occasions [sic] to [his] home country Mexico or any other country (ies). [He] remained permanently in the US.” *Form I-290B*, filed January 31, 2007. The AAO notes that all the years that the applicant has resided in the United States has been without authorization and that is an unfavorable factor. The applicant claims that “[d]uring [his] presence in the US [he has] been a law-abiding citizen.” *Id.* However, the AAO notes that applicant failed to abide by an immigration judge’s order which is another unfavorable factor. The applicant states “[he] was always gainfully employed...[m]ost of [his] life [he has] lived and worked in the USA.” *Id.* The AAO notes that the applicant submitted Income Tax Returns for 2000, 2001, and 2002, which establishes that the applicant has been working in the United States without authorization, and that is an unfavorable factor. The AAO also notes that on his Form I-212 filed on February 22, 2006, the applicant indicated that he left the United States in 1995 after the immigration judge ordered him removed. He stated that since his departure he has remained outside the United States. The Form I-212 indicates that his residence at the time of filing is in Mexico. This contradicts his statement on appeal, as well as the documents submitted on appeal, in which he claims never to have departed the United States since his arrival in 1989.

The record of proceedings reveals that on April 4, 1995, an immigration judge ordered the applicant deported. The applicant failed to depart the United States as required, and a Form I-205 was issued

against him. 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 history of paying taxes and no criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his failure to abide by an immigration judge's order, his misrepresentation of his residence on his Form I-212, 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.