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U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: FEB 21 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:

SELF-REPRESENTED

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, Vermont 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 Ecuador who married [REDACTED] a lawful permanent resident of the United States, on August 30, 2000, in Ecuador. On December 17, 2000, the applicant attempted to enter the United States without inspection. When apprehended, the applicant originally claimed Mexican citizenship and requested voluntary return to Mexico. On December 18, 2000, a Notice to Appear (NTA) was issued against the applicant. On February 27, 2001, the applicant was arrested for assault in the second degree. On March 16, 2001, an immigration judge ordered the applicant removed *in absentia*. On March 19, 2001, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On April 18, 2001, the applicant filed a motion to reopen the immigration judge's decision. On April 23, 2001, an immigration judge denied the applicant's motion to reopen. On May 8, 2001, the applicant filed an appeal with the Board of Immigration Appeals (BIA). On November 30, 2001, the applicant's daughter, [REDACTED], was born in New York. On April 19, 2002, the applicant's wife became a United States citizen. On May 21, 2002, the applicant's wife filed a second Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On August 22, 2002, the BIA dismissed the applicant's appeal. On September 23, 2002, the applicant filed a motion to reopen the BIA's decision, which the BIA denied on January 15, 2003. The applicant failed to depart the United States. On September 15, 2004, the applicant's first Form I-130 was approved. 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), section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(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 naturalized United States citizen wife and United States citizen daughter.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated July 28, 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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.

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 claims that he "has rehabilitated himself tremendously in the community since the last request for relief. Now not only does he have an approved Form I-130 and a USC spouse and child but he also is tremendously involved in his church and community and volunteer projects. He and his family are practicing Evangelical Christians." *Form I-290B*, filed August 24, 2006. The applicant states that his "wife

got very depressed and she started to see a psychologist but it was not helping... [The applicant's] wife still suffers poor health.... Not only does she suffer with Depression, but she also suffers from severe stomach ailments." *Affidavit from the applicant*, dated August 21, 2006; *see also letter from* [REDACTED] ("[The applicant] and his wife...attend services at an evangelical church, and because his wife suffers from depression, it is this joint activity that they do together that brings some joy to her. Without him, she might stop going and become more depressed."); *see also affidavit from* [REDACTED] dated August 21, 2006 ("Medically, [she has] depression and gastritis and other health maladies associated with the depression...") On May 2, 2006, the applicant's wife was diagnosed with Gastritis; however, the medical report states gastritis is "often caused by medications.... Besides medications, alcohol, caffeine, nicotine, spicy or acid foods, infections and emotional distress can bring on this condition." *Medical report from St. Lukes Emergency Department*, dated May 2, 2006. The AAO notes that the medical report makes no mention of the applicant's wife's history of depression. *Id.* Additionally, the AAO notes that there are no professional evaluations for the AAO to review to determine how the applicant's wife's mental, emotional, and/or psychological health has been affected by the applicant's immigration status. Furthermore, if the applicant's wife's depression is caused by thoughts of her separation from the applicant as [REDACTED] indicates, if she joins the applicant in Ecuador, then her depression would presumably no longer be an issue. The AAO notes that the applicant's wife is also a native of Ecuador. The applicant claims that because of his religious beliefs, he would face discrimination if he returns to Ecuador. "In the end, if [they] were returned to Ecuador [they] would have to change and limit [their] religious lifestyle from open to closed as [they] would have to have in Ecuador private worship only allowed in [their] home." *Affidavit from the applicant, supra.* The AAO notes that there is no evidence in the record establishing that in Ecuador, Evangelical Christians are discriminated against, and furthermore, "Amnesty International believes that, through its Constitution and the international human rights treaties it has ratified, the Ecuadorian States has made a clear and strong pledge to respect human rights." *Ecuador: Broken promises Impunity in the police court system continues*, page 7, undated. The applicant claims that his wife "is fully economically supported by [him] and [his] daughter and wife depend on [him] as the sole means of their support." *Affidavit from the applicant, supra.* The applicant's wife states "[w]ithout the income of [the applicant], [she] would have no choice but to ask for public assistance...he is the primary source of income for [their] home." *Affidavit from* [REDACTED], *supra.* 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 spouse and daughter, but it will be just one of the determining factors.

The record of proceeding reveals that on December 17, 2000, the applicant entered the United States without inspection. On March 16, 2001, an immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States as ordered. 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 United States citizens, his wife and child, general hardship they may experience, and the approval of a petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his failure to abide by an order of deportation, 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.