



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 09 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.

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 married [REDACTED] in Mexico on April 17, 1985. On November 27, 1986, the applicant's daughter, Divany, was born in Mexico. In March 1991, the applicant initially entered the United States without inspection. On June 11, 1993, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On August 4, 1993, the applicant's Form I-130 was approved. At some point, the applicant departed the United States. On October 1, 1995, the applicant attempted to enter the United States by presenting a Resident Alien Card (I-551), belonging to another individual. On October 4, 1995, an immigration judge ordered the applicant deported from the United States. On the same day, the applicant was deported. Based on the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485), filed May 21, 1999, the applicant reentered the United States without inspection on October 14, 1995. On April 23, 1997, the applicant's husband became a United States citizen. On January 19, 1998, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On April 30, 1998, the Service notified the applicant that a Form I-212 was not required at that time. On July 7, 1998, the applicant's daughter, [REDACTED] was born in California. On May 21, 1999, the applicant filed a Form I-485. Based on the applicant's second Form I-212, filed on February 27, 2006, the applicant voluntarily departed the United States on November 23, 1999. On August 9, 2001, the applicant's Form I-485 was denied because the applicant failed to appear for her interview. 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)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). She 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 her naturalized United States citizen husband and two children.

The Director determined that the applicant is inadmissible pursuant to sections 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), and 212(a)(9)(B) of the Act, 8 U.S.C. § 212(a)(9)(B), for being ordered removed under section 240 or any other provision of law and for being unlawfully present in the United States for one year or more. The Director found that the unfavorable factors in the applicant's case outweighed the favorable factors, and he denied the applicant's Form I-212 accordingly. *Director's Decision*, dated August 29, 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.

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's husband states that the applicant is a honest, hard working, good mother, and he requests that she returns to the United States to reside with him and their children. *Form I-290B*, filed September 28, 2006. The applicant states that she is a law abiding individual who wants to raise her family in the United States. *See letter from the applicant*, dated September 4, 1997. The AAO notes that there is no documentation in the record that the applicant has been employed in the United States without authorization, which is a favorable factor; however, she resided in the United States for many years without authorization and this is an unfavorable factor. The AAO notes that the applicant's husband states that applicant departed the United States on November 23, 1999; however, there is no evidence in the record establishing that the applicant departed the United States on November 23, 1999 or that she is still residing in Mexico. *See Form I-212*, filed February 27, 2006. The applicant's husband states that he has two jobs and he "will maintain and support [his] family in all their needs room, board, education, house, [and] everything..." *Letter from* [REDACTED] dated September 15, 2006. Regarding the hardship the applicant's husband 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 spouse and daughters, but it will be just one of the determining factors.

The record of proceedings reveals that on October 4, 1995, an immigration judge ordered the applicant deported from the United States. On the same day, the applicant was deported from the United States. On October 14, 1995, the applicant reentered the United States without inspection. 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 family ties to United States citizens, her husband and daughters, and general hardship they may experience.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, her attempt at reentering the United States by presenting a Resident Alien Card in someone else's name, her reentry without inspection into the United States subsequent to her October 4, 1995 deportation, and periods of unauthorized 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 she 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.