



U.S. Citizenship
and Immigration
Services

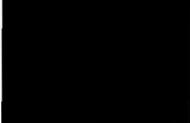
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FILE:



Office: CALIFORNIA SERVICE CENTER
[consolidated therein]

Date: JUN 06 2008

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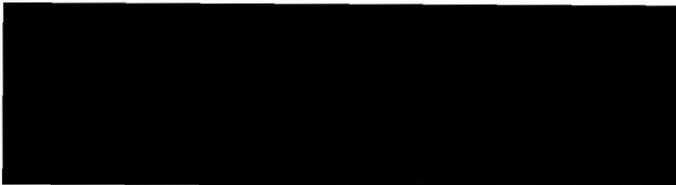
Applicant:



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 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 in 1994. On an unknown date, the applicant departed the United States. On May 12, 2001, the applicant attempted to enter the United States by presenting a Border Crosser Card in someone else's name and was expeditiously removed from the United States. On an unknown date, the applicant reentered the United States without inspection. In February 2004, the applicant departed the United States. On February 15, 2004, the applicant attempted to reenter the United States by concealing himself in the trunk of a vehicle. On the same day, the applicant was expeditiously removed from the United States. On September 15, 2004, the applicant's son, [REDACTED], was born in California. On an unknown date before September 28, 2004¹, the applicant reentered the United States without inspection. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), and 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), and 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(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 son.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for being unlawfully present in the United States after previous immigration violations, section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A), for being previously removed from the United States, section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), for being present in the United States without admission or parole, and section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for being unlawfully present in the United States for one year or more. 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 March 21, 2007. The AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain seek admission into the United States by fraud.

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

(A) Certain alien previously removed.-

(i) Arriving Aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

¹ On September 28, 2004, the applicant signed his son's birth certificate in California.

(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.

(v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

(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.

Section 212(a)(6)(A). Illegal entrants and immigration violators.-

(A) Aliens present without admission or parole.-

(i) In general.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the [Secretary], 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.

Counsel claims that returning the applicant “to his underdeveloped country with his U.S. Citizen son will have negative consequences for his child’s future. Just a few school children make to the higher level of education, about 24 percent of all enrolled school children.” *Appeal Brief*, dated April 2, 2007. The AAO notes that regarding the hardship the applicant’s son may face, 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 son, but it will be just one of the determining factors. The applicant claims that he has “been a law binding [sic] resident of [his] community and ha[s] paid [his] taxes”, and he wants to adjust his “status through a Labor Petition.” *Applicant’s Response to Notice of Action*, undated. The AAO notes that there is no documentation in the record that the applicant is employed or has a pending Petition for Alien Worker (Form I-140). If the applicant is employed, his employment is without authorization and that would be an unfavorable factor. Counsel states the applicant has resided in the United States for thirteen

years and has good moral character. *Appeal Brief, supra*. The AAO notes that the applicant's numerous years of residence in the United States has been without authorization and that is an unfavorable factor.

The record of proceedings reveals that on May 12, 2001 and February 15, 2004, the applicant was expeditiously removed from the United States. Based on the applicant's expedited removals, the applicant is clearly inadmissible under section 212(a)(9)(A)(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 United States citizen, his son, general hardship he may experience, and no criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his use of a Border Crosser Card in someone else's name in order to obtain entry into the United States, his illegal reentries into the United States subsequent to his May 12, 2001 and February 15, 2004 removals, 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.