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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

114

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 19 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 initially entered the United States without inspection in January 1990. On August 29, 1996, the applicant was apprehended by the Service and he requested voluntary removal to Mexico. On an unknown date before October 16, 1999, the applicant reentered the United States without inspection. On October 16, 1999, the applicant was arrested for driving without a license in Arizona. On November 26, 1999, the applicant was arrested for driving under the influence in Arizona; however, the charge was dismissed. On November 26, 2000, the applicant was convicted of extreme driving under the influence in Arizona, and was sentenced to ten (10) days in jail. On December 5, 2000, the applicant was apprehended by the Service, he requested voluntary removal to Mexico and was removed from the United States. In February 2001, the applicant reentered the United States without inspection. On August 20, 2001, the applicant was arrested for aggravated driving under the influence in Arizona. On an unknown date, the applicant departed the United States. On August 28, 2001, the applicant was apprehended by Customs and Border Protection (CBP) attempting to reenter the United States without inspection, and he was voluntarily removed from the United States. On July 25, 2002, the applicant was convicted of two counts of aggravated driving while under the influence of intoxicating liquor or drugs, for his August 20, 2001 arrest, and was sentenced to four (4) months in jail and three (3) years probation. On October 15, 2002, a Notice to Appear (NTA) was issued against the applicant. On October 30, 2002, an immigration judge ordered the applicant removed from the United States. On October 30, 2002, a Warrant of Removal/Deportation (Form I-205) was issued. On October 31, 2002, the applicant was removed from the United States. On or about January 1, 2003, the applicant reentered the United States without inspection. On September 17, 2004, the applicant was arrested for littering in Arizona. On September 23, 2004, another Form I-205 was issued against the applicant, his previous removal order was reinstated, and the applicant was removed from the United States. On an unknown date, the applicant reentered the United States without inspection. 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)(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). 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 wife and daughter.

The director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A), for being previously removed from the United States, 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, 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, and 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. The director found 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 May 19, 2007.

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

(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.

(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.

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 he has “not committed any crime. [He has] kept law abiding...” *Form I-290B*, filed June 11, 2007. The AAO notes that the applicant has an extensive criminal record and a history of violating United States immigration laws. The applicant claims that he has “been working responsibly and with honesty.” *Id.* He states that he is “the sole support for [his] family and they need [him] here with them.” *Letter from the applicant*, dated June 7, 2007. The applicant’s wife states the applicant “works really hard to support [the baby] and [her], and to provide for the both of [them].” *Letter from [REDACTED]*, dated June 7, 2007. The AAO notes that the applicant has been working for many years without authorization and that is an unfavorable factor. Additionally, 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 applicant’s wife states that “all the stress and the worries about [the applicant’s] deportation were too much for [her] and [she] lost [a baby through miscarriage].” *Letter from [REDACTED] supra.* The applicant’s wife states that she worries “when [the applicant] goes out to work everyday, not knowing whether he would be back home or be

deported once again. [Their] daughter has truly changed [their] perspective for legalization. [They] both want for [the applicant] to be legal in the United States. [They] need him with [them] to be together as a family. [They] need his support.” *Id.* Regarding the hardships the applicant’s family 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 daughter, but it will be just one of the determining factors.

The record of proceedings reveals that on September 5, 1996 and again on October 30, 2002, the applicant was ordered removed from the United States. Based on the applicant’s previous orders 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.*

Where an applicant is seeking discretionary relief from removal or deportation and the courts are required to weigh favorable equities or factors against unfavorable factors, many have repeatedly upheld the general principal that less weight is given to equities acquired by an alien after an order of deportation or removal has been issued. The AAO notes that the applicant’s Form I-212 involves a similar weighing of equities or favorable factors against unfavorable factors in order to determine whether to grant discretionary relief.

In *Garcia-Lopez v. INS*, 923 F.2d 72 (7th Cir. 1991), for example, the Seventh Circuit Court of Appeals (Seventh Circuit) reviewed a Board of Immigration Appeals (Board) denial of an alien’s request for discretionary voluntary departure relief. The Seventh Circuit found that the Board’s denial rested on discretionary grounds, and that the Board had weighed all of the favorable and unfavorable factors and stated the reasons for its denial of relief. The Seventh Circuit affirmed the general principle that less weight may be accorded to equities acquired after an order of deportation is issued, and the Seventh Circuit concluded that the Board had not abused or exercised its discretion in an arbitrary or capricious manner.

The favorable factors in this matter are the applicant's family ties to United States citizens, his wife and daughter, general hardship they may experience, and letters of recommendations.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his numerous illegal reentries into the United States subsequent to his removals, his criminal and arrest record, 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.