

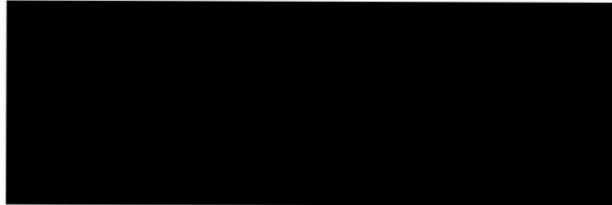
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: SOUTH PORTLAND, MAINE

Date: JUN 20 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. Wienmann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Field Office Director, South Portland, Maine, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada. On August 18, 1975, the applicant was convicted of theft under \$200 in Canada, ordered to pay a fine, and sentenced to fifteen (15) days in jail. On November 10, 1982, the applicant entered the United States on a B-2 nonimmigrant visa, with authorization to remain in the United States until May 9, 1983. On February 21, 1983, the applicant was convicted of breaking and entering in Canada, ordered to pay a fine, and sentenced to one (1) month in jail and two (2) years probation. On August 10, 1983, the applicant was convicted of attempted theft over \$200 in Canada, and was sentenced to seven (7) days in jail and two (2) years probation. On October 23, 1987, the applicant was arrested in La Plata, Maryland, for being in possession of fireworks and two counts of a concealed weapon, and on the same day, the applicant was convicted of being in possession of fireworks and was placed on probation. On September 8, 1989, an Order to Show Cause (OSC) was issued against the applicant. On June 11, 1990, the applicant filed an Application for Suspension of Deportation (Form I-256A). On February 5, 1991, an immigration judge ordered the applicant deported to Canada. On February 15, 1991, the applicant filed an appeal with the Board of Immigration Appeals (Board). On August 21, 1991, the Board summarily dismissed the applicant's appeal. On September 12, 1991, a Warrant of Deportation (Form I-205) was issued. On May 5, 2000, the applicant was arrested for resisting arrest in Littleton, Colorado. On October 14, 2000, the applicant was arrested for resisting arrest in Englewood, Colorado. On October 23, 2001, the applicant was arrested for driving under the influence. On April 11, 2003, the applicant was arrested for harassment, and on April 12, 2003, the applicant was convicted of harassment. On December 15, 2003, the applicant was removed from the United States. On May 16, 2004, the applicant attempted to enter the United States as a visitor for pleasure. On July 20, 2004, a United States District Court judge, in the District of North Dakota, convicted the applicant of attempted re-entry of a deported alien, in violation of 8 U.S.C. § 1326(a). On the same day, the applicant was expeditiously removed from the United States. The applicant is inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), and 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(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 return to the United States to continue with his pending lawsuit for a motor vehicle accident.

The Field Office Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for being ordered removed under section 235(b)(1), and section 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for being convicted of a crime involving moral turpitude, and he denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Field Office Director's Decision*, dated March 7, 2007.

Section 212(a)(2)(A) of the Act provides, in pertinent part, that:

(A) *Conviction of certain crimes.*—

(i) In general.—Except as provided in clause (ii), any alien convicted of,

or who admits having committed, or who admits committing acts which constitute the essential elements of –

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime...

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 section 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-

- (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.

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.

The AAO notes that the applicant provided documentation establishing that his Canadian convictions have been pardoned; however, he has still been convicted of crimes for immigration purposes. Section 101(a)(48) of the Act states that when an alien enters a plea of guilty, or is found guilty, and a formal judgment of guilt is entered by a court, where a judge has ordered some form of punishment, penalty, or restraint on the alien's liberty, there has been a conviction for immigration purposes. The AAO notes that the applicant was found guilty of theft and sentenced to fifteen (15) days in jail. The applicant is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The AAO finds that the applicant's conviction for a crime involving moral turpitude is an unfavorable factor. Additionally, the AAO notes that the applicant failed to establish his rehabilitation, as demonstrated by his extensive criminal record in the United States which is an unfavorable factor.

On appeal, the applicant claims that he requires surgery in the United States and he "ask[s] for [the AAO's] understanding to allow [him] to improve [his] health." *Appeal*, filed April 10, 2007. [REDACTED] states the applicant's right shoulder was injured; however, "no orthopaedic surgeon in Montreal has recommended that he undergo surgery. Recently, [the applicant] has seen another orthopaedic surgeon, Dr. [REDACTED], and the latter only proposed to infiltrate [the applicant's] shoulder with cortisone to reduce his chronic pain but hasn't suggested surgery for him." *Letter from [REDACTED] General Practitioner*, dated March 19, 2007. [REDACTED] recommends that since the applicant's "left shoulder has been operated successfully by [REDACTED] in the U.S., [he] think[s] that [the applicant] can get a better chance at being operated in the US by that same doctor than in Canada. As it is, [the applicant's] accident happened in the US and he is still covered by the insurance there." *Id.* [REDACTED] "feel[s] that it is [in] the best interests of the [applicant]...to return to [him] for continued patient care and surgery on his right shoulder as a result of a motor vehicle accident on 11/04/2002." *Letter from [REDACTED] M.D., Mile High Orthopaedic Group*, dated April 3, 2007. The AAO notes that applicant's numerous years in the United States was without authorization and that is an unfavorable factor.

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 letters of recommendation from friends and co-workers.

The AAO finds that the unfavorable factors in this case include the applicant's Canadian criminal convictions, his criminal record in the United States, his failure to depart the United States after his authorization expired, his failure to abide by an order of deportation, 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.