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

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FILE: [REDACTED] Office: MIAMI, FLORIDA Date: OCT 29 2008

IN RE: Applicant: [REDACTED]

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 District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Albania, who entered the United States on August 15, 1996, by presenting a passport in someone else's name. On April 4, 1997, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On November 28, 1997, a Notice to Appear (NTA) was issued against the applicant. On September 22, 1998, an immigration judge granted the applicant voluntary departure to depart the United States by November 23, 1998. On October 23, 1998, the applicant filed an appeal with the Board of Immigration Appeals (Board). On July 30, 1999, the Board denied the applicant's appeal. The applicant failed to depart the United States as ordered. On September 14, 2000, a Warrant for Removal/Deportation (Form I-205) was issued. On June 13, 2003, the applicant was removed from the United States. On July 30, 2004, the applicant attempted to enter the United States without inspection, and on the same day, the applicant's previous order of removal was reinstated. On August 4, 2004, a Form I-205 was issued against the applicant. On September 15, 2004, the applicant was removed from the United States. On July 3, 2006, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) with the Jacksonville, Florida field office. On July 27, 2006, the District Director denied the applicant's Form I-212. The applicant is inadmissible to the United States until September 15, 2024 under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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 continue his employment in the United States.

The District Director found that the applicant failed to present any "evidence to warrant an approval of [the applicant's] request for permission to reapply for admission into the United States after [his] removal. In its totality, [the applicant's] record shows a pattern of callous disregard for the laws of the United States and does not merit a favorable exercise of discretion." *District Director's Decision*, dated July 27, 2006. The District Director denied the applicant's Form I-212 accordingly. *Id.*

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-

- (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.

On appeal, the applicant states the he has "lived and worked in FL close to 7 years and never been in trouble." *Form I-290B*, filed August 23, 2006. The AAO notes that the record does not contain any evidence that the applicant has a criminal record; however, the applicant's attempt to reenter the United States on July 30, 2004 without inspection is a violation of United States immigration law and is an unfavorable factor. Additionally, some of the time that the applicant was present in the United States was without authorization and that is an unfavorable factor. The applicant states he violated "the immigration laws...because [he] felt uncomfortable staying in Albania since [his] family and [he] had problems there." *Id.* The AAO notes that the applicant had an opportunity to file an asylum claim and make his case to an immigration judge; however, the immigration judge denied the applicant's request for asylum. The applicant claims that the company he worked for in Florida "is sponsoring [him]." *Id.* The AAO notes that the record does not contain a Petition for Alien Worker (Form I-140) filed on the applicant's behalf by his previous employer. Additionally, the AAO notes that some of the time that the applicant was employed in the United States was without authorization and that is an unfavorable factor.

The record of proceeding reveals that on September 22, 1998, an immigration judge granted the applicant voluntary departure. On July 30, 1999, the Board denied the applicant's appeal. The applicant failed to depart the United States as ordered. On June 13, 2003, the applicant was removed from the United States. On July 30, 2004, the applicant attempted to reenter the United States without inspection, and on September

15, 2004, the applicant was removed from the United States. Based on the applicant's previous removals from the United States, 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 factor in this matter is the applicant's lack of a criminal record. The AAO finds that the unfavorable factors in this case include the applicant's initial entry into the United States by presenting a passport in someone else's name, his failure to abide by an immigration judge's order, his entry without inspection subsequent to his June 13, 2003 removal, and his periods of unauthorized presence and employment in the United States. 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.