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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



Office: SEATTLE, WASHINGTON
(HELENA, MONTANA)

Date: SEP 10 2008

IN RE:

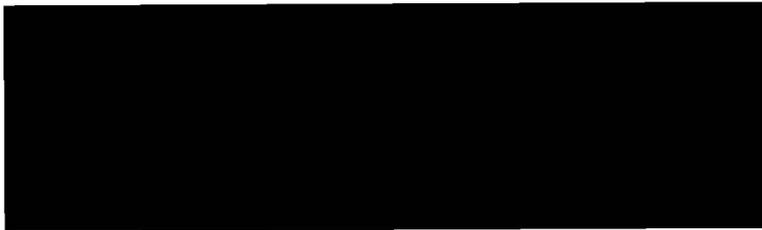
Applicant:



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:



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, Field Office Operations, Customs and Border Protection, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant is a native of the Philippines and citizen of Canada who attempted to enter the United States on February 3, 2005. When immigration officers questioned the applicant regarding the purpose of her visit to the United States, she claimed that she was going to Seattle, Washington, for pleasure. After being placed in secondary inspection, the applicant admitted that she was going to San Francisco, California, to continue her employment as a caregiver. On February 3, 2005, 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)(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 accompany her elderly employer on trips to the United States.

The 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 who again seeks admission within 5 years of the date of such removal, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to obtain an immigration benefit. 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 July 13, 2007.

The relevant statutes state in pertinent part:

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.

....

(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)(6)(C)

(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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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, counsel states that the applicant's misrepresentation was not material, as she would have been admissible to the United States had she told the truth. *Appeal Brief*, dated September 5, 2007. The AAO concurs with counsel that the applicant may have been eligible for a B-1 nonimmigrant visa as the personal servant of her foreign employer. However, whether the applicant would have been issued a B-1 visa through legal means is not relevant to determining whether her misrepresentation was material under the present facts. The applicant made a willful misrepresentation in order to gain admission to the United States, not to gain a B-1 visa. Had she revealed her true purpose for entering the United States to the immigration officers, she would have been refused admission due to her lack of a valid entry document. Thus, the applicant misrepresented the reason for entering the United States in order to gain a benefit under the Act for which she was not eligible, and such misrepresentation was material.

The applicant states that "[a]rrangements for [her] trip of February 3, 2005 were made by [redacted] [redacted]...[She does] not understand why [redacted] only provided [her] with a one way ticket...[She] also [does] not understand why [redacted] asked [her] to lie about [her] purpose for entry. As [she is] accustomed to following directions, [she] did exactly as [redacted] directed." *Letter from the applicant*, dated October 26, 2005. The applicant apologizes and she "feel[s] embarrassed and ashamed at [her] misrepresentation to CBP...Even though [she] was instructed to lie by [redacted] [she] take[s] full responsibility for [her] actions." *Id.* The applicant's employer states she employs the applicant as her caregiver, and the applicant accompanies her on all of her trips. *Letter from [redacted]*, undated. Counsel states the applicant's employer "finds it a terrible hardship to be unable to freely visit her U.S. citizen daughter. [redacted] is unable to travel without the Applicant's assistance." *Appeal Brief, supra.* [redacted] states she likes to travel, but because of her age, she cannot travel alone. *Letter from [redacted] supra.* Counsel claims that the applicant does not have a criminal record and has no family in the United States. *See Appeal Brief, supra.*

The record of proceedings reveals that on February 3, 2005, the applicant was expeditiously removed from the United States. Based on the applicant's previous order of removal, 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 include the letter of recommendation from the applicant's employer, her remorse for her actions, and no criminal record apart from her immigration violation.

The AAO finds that the unfavorable factor in this case is the applicant's attempt at entering the United States by misrepresenting her purpose for entering the United States.

While the applicant's actions cannot be condoned, the AAO finds that given all the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.