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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 2 2004

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) 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 Guatemala who was ordered removed by an immigration judge on December 12, 1995. The applicant was granted voluntary departure by the Board of Immigration Appeals until March 2, 1998. On October 25, 1999, the applicant's petition for review was dismissed by the United States Court of Appeals for the Ninth Circuit. On December 27, 2000, a Warrant of Deportation was ordered against the applicant. On March 6, 2001, the applicant failed to appear for his scheduled departure from the United States. The applicant is the son of a legal permanent resident of the United States. The applicant 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 in the United States with his parents.

The director determined that the applicant failed to establish eligibility for the benefit sought and denied the application accordingly. *Decision of the Director*, dated September 9, 2003.

On appeal, the applicant asserts that he disagrees with the director's decision. *Form I-290B*, dated September 23, 2003.

The record contains copies of the legal permanent resident cards and naturalization certificates issued to relatives of the applicant; a copy of the applicant's Department of Motor Vehicle record and a police clearance for the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> > (A) Certain aliens 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) [A]ny alien . . . who-
> >
> > > > (I) Has been ordered removed under section 240 or any other provision of law . . . 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 alien's reembarkation at

> a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factor in the application is the hardship imposed on the applicant's parents by the applicant's inadmissibility to the United States. The AAO notes that the record makes no assertions regarding hardship imposed on the applicant's parents as a result of the applicant's inadmissibility.

The unfavorable factors in the application include the failure of the applicant to comply with the terms of his removal order and depart from the United States as required. Further, the record reflects that the applicant has a criminal record in this country having been convicted of driving a vehicle with an alcohol level of .08% or more in a Los Angeles court on March 18, 1993.

The AAO notes that an applicant's prior residence in the United States is considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. *See Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978). The applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant has failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.