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FILE:  Office: PORTLAND, MAINE Date: **AUG 15 2006**
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)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 into the United States after Deportation or Removal (Form I-212) was denied by the District Director, Portland, Maine, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of France and a citizen of Canada, who on June 8, 2004, at the Derby Lane, Vermont, Port of Entry applied for admission into the United States. The applicant was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa. Consequently, on the same day the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). He 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 travel to the United States as a non-immigrant visitor for business.

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. *See District Director's Decision* dated May 16, 2005.

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

(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 five 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's 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; (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 reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, counsel submits a brief, copies of the applicant's Canadian tax returns, a photocopy of the applicant's Form I-94, and photocopies of the applicant's applications for B-1 nonimmigrant visas. In his

brief, counsel states that the applicant has been promoting and marketing wood products manufactured in Canada for sale and distribution in the United States, he has maintained his domicile and residence in Canada, and has filed Canadian income taxes. In addition, counsel states that the applicant was not unlawfully present or engaged in unauthorized employment as stated in the District Director's decision. Counsel further states that the applicant was granted a B-1 business visa which allowed him to enter the United States for a temporary period of time to conduct business. Additionally, counsel states that the applicant was never an employee of American Notebook nor had he ever received any money from American Notebook and, therefore, the District Director's determination that the applicant "had begun employment with American Notebook" is erroneous and not supported by the evidence. Furthermore, counsel states that the applicant entered the United States under the provisions of NAFTA, which allows individuals who are self-employed to conduct business activities in the United States, particularly sales activities. Counsel states that the only unfavorable factor is that the applicant attempted to enter as a nonimmigrant visitor for pleasure when his actual intention was to conduct business in the United States. According to counsel, the applicant panicked when he arrived at the border and realized that his B-1 visa had expired. Counsel states that the applicant has no criminal history, has provided letters from businesses in the United States attesting to his good moral character and the need for his services in the United States, and has expressed appropriate remorse for his immigration violation. Finally, counsel states that based upon consideration of all relative factors the favorable factors outweigh any adverse factors and should support the exercise of discretion to grant the Form I-212.

Counsel's assertions are not persuasive. The record of proceedings contains a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867A) in which the applicant admitted under oath that he had a "sideline" business with American Notebook for which he was a representative and would receive commissions from them. In addition, on June 8, 2004, the applicant admitted that he had been residing in the United States for about 2-3 years in order to be closer to his distributors, instead of traveling back and forth to Canada.

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.*

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that:

[T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

The AAO finds that the favorable factor in this case is that the applicant has not attempted to enter the United States after his removal.

The AAO finds that the unfavorable factors in this case include the applicant's disregard for the immigration laws by willfully misrepresenting a material fact while applying for admission into the United States, and his unauthorized employment.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factor outweighs 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 the applicant 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.