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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 11 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the application for permission to reapply for admission. This matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who on March 18, 2002, at the Lukeville, Arizona, Port of Entry, applied for admission into the United States. The applicant presented a fraudulent I-551 Resident Alien Card. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud. Consequently, on March 18, 2002, 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 has remained outside the United States since that time. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She 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 remain in the United States and reside with her two U.S. citizen daughters.

The Director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for being an alien who is seeking admission to the United States within 5 years after being ordered removed from the United States. The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated March 1, 2005.

The proceedings in the present case are for permission to reapply for admission into the United States after deportation or removal and, therefore, the AAO will not discuss the applicant's potential grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act. These proceedings are limited to the issue of whether or not the applicant meets the requirements necessary for the ground of inadmissibility under section 212(a)(9)(A)(i) of the Act to be waived.

On appeal, counsel asserts that the facts in this case establish that the applicant warrants a favorable exercise of discretion. *See Form I-290B,* dated March 28, 2005.

Section 212(a)(9) 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 Secretary has consented to the alien's reapplying for admission.

The record of proceedings indicates that the applicant attempted to enter the United States by fraud and was removed from the United States pursuant to section 235(b)(1) of the Act. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(i) of the Act and, therefore, must receive permission to reapply for admission.

In the Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867B), the applicant admitted under oath that she was attempting to reenter the United States in order to return to her residence in Douglas, Arizona. The applicant admitted that she had lived in the United States for a period of five years. The applicant admitted that she had originally entered the United States without inspection near Agua Prieta Sonora. The record reflects that, on August 10, 1994, the applicant gave birth to her first U.S. citizen daughter in California. The record reflects that, on October 30, 1999, the applicant gave birth to her second U.S. citizen daughter in Douglas, Arizona. On April 30, 2001, the applicant's U.S. citizen sister filed a Petition for Alien Relative (Form I-130) on behalf of the applicant.

On appeal, counsel submitted a copy of the receipt notice for the Form I-130. The AAO notes that the Form I-130 is filed under a section of law that will not make an immigrant visa available to the applicant for *at least* a decade. Counsel asserts that the applicant also has other positive factors in that (1) the applicant's husband, who is currently caring for her two U.S. citizen daughters in Arizona, is her only source of income; (2) the applicant has other relatives residing in the United States; and (3) the applicant only attempted to reenter the United States because she had to return to Mexico because her aunt was very ill. The applicant, in the Form I-867B, stated her husband is not a U.S. citizen and there is no evidence in the record to suggest that the applicant's husband has any legal status in the United States. The record contains no evidence to suggest that, besides her two daughters and her sister, the applicant has any other relatives who legally reside in the United States. Finally, counsel's explanation as to why the applicant departed the United States contradicts the Form I-867B, in which the applicant stated she was attempting to reenter the United States after attending a party in Tijuana, Mexico.

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 in the United States 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 favorable factors in this matter are the applicant's two U.S. citizen daughters, her U.S. citizen sister, and a pending immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States, extended unauthorized residence in the United States and the applicant's attempt to enter the United States by fraud.

The applicant in the instant case has immigration violations that include fraud. The applicant's actions in this matter cannot be condoned. The totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the laws of the United States, and that the favorable factors in the present matter are outweighed by the unfavorable factors. Moreover, the applicant does not have a lawful avenue to reenter the United States within the time period in which she is deemed inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she 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.