U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 14 2006

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)(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 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 a citizen of Chile who was admitted into the United States as a non-immigrant visitor for pleasure on August 4, 1991, with an authorized period of stay until February 2, 1992. The applicant applied for and received extensions of his status until February 2, 1993. On January 14, 1993, he filed a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as a religious worker. On February 27, 1993, the applicant was granted voluntary departure until March 1, 1993. The applicant departed the United States on February 27, 1993, and on March 2, 1993, he applied for admission into the United States. His inspection was deferred and the applicant was paroled until April 12, 1993. On April 21, 1993, his Form I-360 was denied. On September 30, 1993, a notice for a hearing before the immigration judge was issued, and on January 19, 1994, an immigration judge administratively closed the proceedings. On February 14, 1994, a new Form I-360 was filed on behalf of the applicant, which was denied on May 18, 1994. On November 2, 1994, the AAO dismissed an appeal and on May 3, 2000, a Motion to Reopen (MTR) was dismissed. On January 30, 1997, a motion to reschedule the applicant's exclusion proceedings was filed with the immigration judge. The motion was granted and the applicant was scheduled for exclusion proceedings. On July 27, 1999, the applicant failed to appear for his exclusion hearing. The applicant was found to be 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 or other valid entry document, and he was ordered excluded and deported, in absentia, by an immigration judge. On September 8, 1999, the Board of Immigration Appeals (BIA) dismissed an appeal, as interlocutory. On May 1, 2001, the BIA affirmed the immigration judge's decision and dismissed an appeal, and a MTR was returned without further action on August 13, 2001. On August 28, 2001, the applicant was apprehended and subsequently released on a $5,000 bond. On August 29, 2001, the applicant filed an Application for Stay of Deportation or Removal (Form I-246), and the applicant was granted stay of deportation until October 29, 2001. On October 29, 2001 the applicant was deported from the United States. The record of proceedings reflects that a Form I-360 was approved on behalf of the applicant on April 20, 2001. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 to travel to and reside in the United States.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. *See Director's Decision* dated April 25, 2005.

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

> (A) Certain aliens previously removed.-
>
> > (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 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 for 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 states that the Form I-212 was improperly denied, because the applicant has shown that the favorable factors outweighed the unfavorable factors. In addition, counsel states that the applicant has followed all laws pertaining to appeals and has been waiting for over three years in his native country for a final decision on his Form I-212. Additionally, counsel states that while in the United States the applicant was always in legal status by virtue of his being able to exhaust his right to pursue an appeal of his deportation. Furthermore, counsel states that the applicant is a person of good moral character with a history of steady employment and no criminal record. Finally, counsel states that the applicant left the United States after having exhausted all legal appeals and he should not be penalized because he pursued legal venues available to him.

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 factors in this case are the approved Form I-360, and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's failure to appear for an exclusion hearing, his failure to depart the United States after a final exclusion order was issued and after his appeal was dismissed by the BIA, his failure to inform the Service of his change of address as required pursuant to section 241(a)(3)(A) of the Act, his employment without authorization and his periods of presence in the United States without authorization. The Commissioner stated in *Matter of Lee, supra,* that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

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 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.