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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: SEP 27 2009

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:

SELF-REPRESENTED

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 sustained and the application approved.

The applicant is a native and citizen of the Philippines who was admitted into the United States as a non-immigrant visitor for pleasure on December 22, 1991, with an authorized period of stay until June 21, 1992. The applicant was a dependent on a Request for Asylum in the United States (Form I-589) filed by her father on July 31, 1992. On December 10, 1993, her father's asylum application was denied and an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was issued on April 6, 1994. On June 26, 1995, an immigration judge found the applicant deportable pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act), for having remained in the United States longer than permitted and granted her voluntary departure until September 26, 1995, in lieu of deportation. The applicant's father filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on August 4, 1997, and the applicant was permitted to depart from the United States voluntarily within 30 days from the date of the BIA's order. The applicant failed to surrender for removal or depart from the United States on or prior to September 3, 1997. The applicant's failure to depart the United States on or prior to September 3, 1997, changed the voluntary departure order to an order of deportation. On October 20, 1997, a Warrant of Removal/Deportation (Form I-205) was issued and a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that she appear at the Los Angeles, California district office in order to be removed from the United States. The applicant's father filed a Motion to Reopen (MTR) and an application for stay of deportation. On November 18, 1997, the application for stay of deportation was denied and, consequently, on November 19, 1997, the applicant was deported from the United States. Based on the applicant's departure from the United States the MTR was withdrawn per 8 C.F.R. § 3.2(d) and on October 19, 1998, the BIA returned the MTR to the immigration court without further action. The applicant is the derivative beneficiary of an approved Petition for Alien Relative (Form I-130) filed on behalf of her mother. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). **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 travel to the United States and reside with her U.S. citizen grandmother.

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 October 12, 2005.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is signed by the applicant's grandmother and not the applicant herself. Therefore, the AAO will not be sending a copy of the decision to the attorney mentioned on the Form G-28, but this office will accept the submitted information.

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 deterring 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, proof that a Form I-130 has been filed on behalf of the applicant's mother, affidavits from the applicant's mother and grandmother, prescriptions regarding the medication the applicant's grandmother is taking, naturalization certificates for the applicant's uncles, and a death certificate for another uncle. In his brief, counsel states that the Director abused his discretion and failed to consider the applicant's multiple favorable equities. Counsel states that the applicant has remained in the Philippines since her deportation, over eight years ago, and does not have a criminal record. In addition, counsel states that the applicant never received the BIA's decision and, therefore, she was unaware that her appeal was dismissed and that she was required to depart the United States. Counsel further states that prior to her deportation the applicant lived in the United States for over six years, assisted her grandmother who suffers from various medical conditions, never received public assistance from the government, and is a person of good moral character. Additionally, counsel states that the applicant would have complied with the BIA's decision if her father's previous attorney had notified the family. Furthermore, counsel states that the applicant and her grandmother would suffer extreme hardship if she is not permitted to enter the United States. The applicant's grandmother suffers from various medical conditions and needs someone to assist her with her everyday errands. Her son, who used to care for her, passed away and she needs her daughter, the applicant's mother, to assist her. Finally, counsel states that the applicant's many favorable factors outweigh her immigration violation, which was committed eight years ago, while the applicant was a minor, and requests that the Form I-12 be granted.

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 be a condonation of the alien's acts and could encourage others to enter without being admitted and 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.*

In his decision, the Director determined that the applicant did not establish any favorable factors to offset her disregard for the laws of the United States and denied the application accordingly.

The AAO does not find that the applicant has shown a continued disregard for the laws of the United States. As noted above, the applicant was authorized to stay until June 21 1992, and she was a dependent on a Form I-589, which was filed on July 31, 1992. The applicant was a dependent on an asylum application, and although it was subsequently denied, she was entitled to exhaust all means available to her by law in an effort to legalize her status in the United States. Her appeal conferred on her a status that allowed her to remain in the United States while it was pending.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, her U.S. citizen grandmother and uncles, the fact that she is a derivative beneficiary of an approved Form I-130, the potential of general hardship to her family, and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's failure to depart the United States after the BIA dismissed his appeal, and periods of unauthorized presence. The applicant cannot be held accountable for her failure to depart the country after she was granted voluntary departure because at the time she was a minor.

While the applicant's actions cannot be condoned, the AAO finds that given all of 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 of the denial of the Form I-212 is sustained and the application approved.