U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: AUG 1 1 2014 Office: U.S. CUSTOMS AND BORDER PROTECTION ADMISSIBILITY REVIEW OFFICE FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission after Deportation or Removal was denied by the Director, Admissibility Review Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen[1] of Canada who twice was ordered removed from the United States, on May 21, 2005 and March 23, 2007. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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 enter the United States as a nonimmigrant for business and tourism purposes.

The Director determined that the applicant's adverse factors outweigh her favorable factors, and he denied the Form I-212, Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212), accordingly. *See Director's Decision,* dated November 12, 2013.

On appeal, the applicant's attorney asserts that the applicant has demonstrated that she is fully rehabilitated, poses no danger to the welfare or security of the United States, and presents compelling reasons for seeking admission as a visitor to the United States.

The record includes, but is not limited to: Form I-290B, Notice of Appeal or Motion; counsel's appeal brief; Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192); letters from the applicant, her mother, her husband, her friends and co-workers; performance evaluations for the applicant and other employment-related materials, including documents relating to employee-assistance based counseling sessions; photographs of her family and of her involvement in her son's football team; and other evidence of her community involvement. The entire record was reviewed and considered in rendering a decision on the appeal.

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.
> >
> > (ii) Other aliens.-Any alien not described in clause (i) who-

[1] The applicant's mother is a U.S. citizen, yet the applicant appears to have no claim to U.S. citizenship, and makes no claim to U.S. citizenship.

(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 who 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 Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant was found inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting material facts concerning her intentions upon her entry into the United States on May 21, 2005. According to her sworn statement, the applicant admitted she intended to provide services as an escort in the United States. The applicant as a result was also found inadmissible under section 212(a)(2)(D)(i) for engaging in prostitution. The record reflects that the applicant also was fined for possessing .5 grams of marijuana and not declaring it. The applicant was ordered expeditiously removed under section 235(b)(1) of the Act the same day. Moreover, the record indicates that on January 20, 2006, the applicant applied for admission into the United States as a visitor for pleasure at Blaine, Washington. She was found inadmissible under 212(a)(9)(A)(i) because of her prior removal order, and she was placed into removal proceedings. She was ordered removed *in absentia* on March 23, 2007. The applicant is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.[2]

The record further reflects that the applicant worked as a prostitute between February 2005 and May 2006. Friends and family members indicate in their letters that the applicant had a troubled childhood, which the applicant refers to as a "nightmare." Her grandparents appear to have raised her, although the applicant was in her father's custody after her parents divorced. The applicant had infrequent contact with her mother, who claims to have struggled with alcoholism in the past. The applicant became involved in prostitution and drugs, and she admits that her life in 2005 was "out of control" and that she is "not proud" of that time in her life. However, the record also includes evidence showing that after this period, the applicant was able to improve herself and her

[2] In addition to requiring approval of her Form I-212, the applicant also requires approval of her Form I-192, due to her inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(2)(D)(i) of the Act. The applicant's Form I-192 was denied on November 12, 2013, and the applicant has appealed this decision to the Board of Immigration Appeals.

circumstances by taking classes, becoming active in professional and community organizations, securing and maintaining steady employment, and re-establishing family ties.

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.

The favorable factors supporting the applicant's case include her rehabilitation, as shown by evidence that she has made positive changes in her life that also benefit her family and her community. Letters from the applicant's co-workers and friends, as well as her employment performance evaluations, confirm that she takes pride in her employment, in supporting her family and in actively volunteering in the community. Her friends speak of her in high regard, with one calling the applicant a "true success story," who, although she has "seen many demons," has "come out on top." The applicant's mother, friends and husband attest to the applicant's good character, the applicant's close relationship with her husband and children, and her stable employment and work ethic. Moreover, the record indicates that over seven years have passed since her immigration violations and her engaging in prostitution.

The unfavorable factors in this case include the applicant's misrepresentation regarding her reasons for entering the United States, her attempts to enter the United States despite her removal order, her possession of an undeclared substance as an arriving alien in May 2005, and her failure to appear for her immigration hearing in 2007. Moreover, she also engaged in prostitution for more than one year.

Although the applicant's immigration violations and criminal activity are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.