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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: JUN 23 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:

SELF-REPRESENTED

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native of the United Kingdom and citizen of Canada who was found inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The applicant was then subject to expedited removal under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) and is inadmissible pursuant to 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 to enter the United States for employment and pleasure.

The director determined that the applicant's expression of regret, stated reason for entering the United States and passage of time do not outweigh adverse factors and denied the Form I-212 accordingly. *See Director's Decision,* dated October 31, 2013.

On appeal the applicant states he is reformed through the passage of time; has acquired an understanding of his offense; and experiences emotional, social, and economic consequences. The record contains a statement from the applicant, letters of support from friends, and documents from Canada. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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-

(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 on July 27 and July 29, 2011, the applicant attempted to enter the United States under TN status (Professionals Under the North American Free Trade Agreement) by presenting a Form I-94 and claiming to work for a U.S. company when in fact he no longer was employed by that company, but rather by another firm. The applicant was then subject to expedited removal pursuant to section 235(b)(1) of the Act. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(i) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

In a letter of appeal the applicant states that he regrets his actions, that he had never previously been arrested, and that at the time of his removal he was unaware of his legal options to enter the United States. The applicant states that his removal has caused loss of standing with his family and community, feelings of struggle with his conscience, an inability to spend time with family on visits to the United States, and a loss of income from August 2011 until May 2012. The applicant further states that prior to his removal Detroit and Michigan had been an integral part of his life and the site of many social activities, which he now misses. The applicant submitted documents from Canada showing his payment of taxes and that he has no criminal record. Letters from the applicant's friends describe him as reputable and of good moral character.

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 in his case are the applicant's lack of a criminal record, claim of hardship to himself and family, letters of support from friends, and expressions of regret for his immigration violation. The unfavorable factors are the applicant's violation of immigration laws by seeking entry to the United States through misrepresentation on two occasions and the recency of those actions.[1]

On appeal the applicant states that his inadmissibility has caused emotional and financial hardship. In the Record of Sworn Statement in Proceedings (Form I-867A) given on July 29, 2011, the applicant stated that the result of his removal would be his immediate unemployment, creating a hardship for himself, his sick wife, and aging mother. However, the applicant has submitted no documentation to support this claim of hardship. He also stated on Form I-867A that he had no relatives in the United States other than his U.S. citizen father, but has submitted no documentation to establish his father's residence.

In a previous statement the applicant claimed that he had used two TN visas in the past and that he had been legally crossing the border to the United States for 32 years. However the applicant has submitted no documentation to support this contention, or to support his employment by U.S. firms.

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

ORDER: The appeal is dismissed.

[1] We note that the applicant also requires Advance Permission to Enter as Non-immigrant (Form I-192) to overcome his inadmissibility under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. In a separate decision, the applicant's Form I-192 was denied, and the denial is currently on appeal before the Board of Immigration Appeals.