

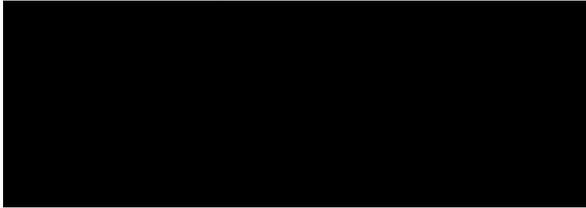
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



HA

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: AUG 10 2005

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission after Removal into the United States after Deportation 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal 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 Mexico who was admitted into the United States as a Lawful Permanent Resident (LPR) on September 7, 1967. On June 7, 1991, the applicant was deported from the United States pursuant to section 241(a)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1251(a)(4), as an alien who after entry has been convicted of two crimes involving moral turpitude. The record reflects that the applicant reentered the United States on or about June 27, 1991, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326. On June 24, 1992, an Immigration Judge ordered the applicant deported from the United States and on June 25, 1992, he was deported to Mexico. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 his U.S. citizen mother.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. See *Director's Decision* dated October 6, 2004.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

On appeal the applicant requests that his case be reconsidered for humanitarian reasons and states that he wishes to join and take care of his mother in the United States. In addition he states that he regrets his prior

behavior that affected his family. Furthermore he states that he is a reformed person, with good moral character, that he complied with all the rules and regulations and never tried to reenter the United States illegally. Finally on the Notice of Appeal to the AAO (Form I-290B) the applicant states that he will be submitting a brief and/or evidence to the AAO within 30 days. The appeal was filed on November 8, 2004, and to date, more than eight months later, no additional documentation has been provided to the AAO.

The record of proceedings reveals the following criminal record:

On October 11, 1978, in the Superior Court of California, County of San Diego, the applicant was convicted of the offense of first-degree burglary and was sentenced to three years probation and 150 days of imprisonment.

On June 5, 1989 in the United States District Court, Southern District of California, the applicant was convicted for the offenses of conspiracy/possession of stolen mail, aiding and abetting possession of stolen mail, and aiding and abetting stolen treasury checks.

Based on the above convictions the applicant is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.

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 favorable factors in this matter are the applicant's family tie to a U.S. citizen, his mother, and the approval of a petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's convictions of crimes involving moral turpitude and his illegal entry into the United States subsequent to his May 28, 1991 deportation.

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 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.