

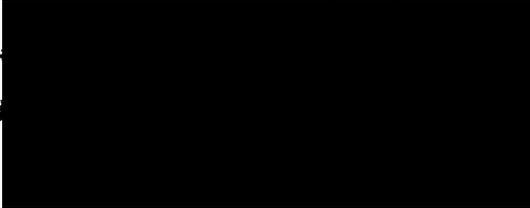
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U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship
and Immigration
Services



H 4

FILE: [REDACTED] Office: LONDON, ENGLAND Date: MAR 09 2005

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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied by the Acting Officer in Charge, London, England, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who on July 8, 2003, applied for admission in the United States. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by willfully misrepresenting a material fact. The applicant knowingly and repeatedly made false statements to immigration officers. Consequently, on the same day the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant 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 travel to the United States and reside with his Lawful Permanent Resident (LPR) spouse and child.

The Acting Officer in Charge determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. See *Acting Officer in Charge's Decision* dated September 26, 2003.

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

(A) Certain alien 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.

.....

(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 has consented to the aliens' reapplying for admission.

A review of the 1996 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, and (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 submits a brief and statements from the applicant, his spouse, his sister and from friends regarding the applicant's character. In his brief counsel states that the applicant should not have been found

inadmissible under section 212(a)(6)(C)(i) of the Act, because at no point did he willfully misrepresent a material fact at the port of entry. In addition counsel states that the applicant's removal from the United States through the expedited removal process should be reversed. In his present statement the applicant states that an immigration officer asked him: "Who are you with" he answered, "I am with no one" and when asked, "Who are you traveling with," he answered that he was traveling with his wife. In affidavits submitted by the applicant previously he stated that when he was asked if he was traveling with any members of his family, he told the immigration officer that he was traveling alone, despite the fact that his wife was traveling with him. Counsel further states that the applicant was not aware that his sister in the U.S. submitted an application for a DV visa on behalf of the applicant and therefore he should not be inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel states that the applicant was coerced into signing a statement admitting to his wrongdoing and pleading for mercy. In support of this statement counsel submits an affidavit from the applicant's sister in which she states that she takes full responsibility for the duplicate entries of the DV application. She states that the applicant filled out an application form and left it with her to submit but she did not check with him to see if he submitted another application prior to her forwarding it.

This version of the events contradicts the applicant's own handwritten statement, and that of his wife, in which they admit that he submitted more than one entry form for the DV program because he believed that this would increase his chances of being selected. These statements were submitted with the applicant's I-601 waiver application. There is no mention of his sister submitting a duplicate entry until after the denial of his Form I-212. Nor does he explain why he would have left a signed copy with his sister if he had already filed an entry form. His claim of being coerced into admitting something he did not do is not supported by the record. There is insufficient evidence in the file to determine the accuracy of his account of what transpired at the Atlanta International Airport therefore that situation will not be addressed.

The proceeding in the present case is for the application for permission to reapply for admission into the United States after deportation or removal and therefore the AAO will not discuss whether the Area Port Director erred in his decision to place the applicant in expedited removal nor will the AAO discuss the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

The applicant, his spouse and counsel state that the applicant's spouse and child would suffer hardship if his waiver application were not granted. The applicant states that he and his spouse are dependent on one another for spiritual and emotional support as well financial support. In addition, he states that his child would suffer hardship since she needs the love and care of both parents. No documentation was presented to support the claim of hardship to the applicant's spouse and child.

Unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied.

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 of deportation; the recency of the deportation; the length of legal residence in the U.S.; the applicant's moral character and his respect for law and order; evidence of reformation and rehabilitation; the applicant's family responsibilities; and hardship to the applicant's family if the applicant were not allowed to return to the U.S.

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 ties in the United States, his spouse and child, and the absence of any criminal record.

The unfavorable factor in this case is the applicant's misrepresentation during his immigrant visa interview, and his continued misrepresentation after he was confronted with the true facts.

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.