

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

*H4*

**PUBLIC COPY**

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 07 2006

IN RE: [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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who, on July 27, 1994, the Immigration and Naturalization Service detained while present at a business known to prepare fraudulent immigration applications. The applicant provided a sworn statement in which he admitted to entering the United States without inspection in October 1992 and being present at the business location in order to obtain a fraudulent Guatemalan birth certificate so that he could file a fraudulent Application for Asylum and Withholding of Removal (Form I-589), as a Guatemalan. The applicant was placed in proceedings and granted voluntary departure until January 27, 1995. The applicant failed to depart the United States. On April 24, 1997, the applicant's spouse, [REDACTED] a non-frivolous Application for Asylum and Withholding of Removal (I-589), which included the applicant as a dependent. On June 13, 1997, the asylum office referred [REDACTED] asylum application to an immigration judge. On September 26, 1997, the immigration judge granted the applicant voluntary departure until January 26, 1998. On October 27, 1997, the applicant filed an appeal with the Board of Immigration Appeals, which was dismissed on July 13, 1999, granting voluntary departure until August 13, 1999. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On November 10, 1999, the applicant was issued a warrant of removal and ordered to appear for removal on January 11, 2000. The applicant failed to appear as ordered or to depart the United States. The applicant is, therefore, inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140) filed on his behalf. 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 remain in the United States and reside with his three U.S. citizen daughters.

The Director determined that the applicant was an alien who was ordered removed from the United States and is now seeking permission to reapply for admission into the United States. The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated January 20, 2005.

These proceedings are limited to the issue of whether or not the applicant meets the requirements necessary for the ground of inadmissibility under section 212(a)(9)(A) of the Act to be waived.

On appeal, counsel does not make any arguments, however, the applicant contends that an immigrant petition for alien worker filed on his behalf has been approved and he has filed an appeal of the denial of his motion to reopen the removal order against him.

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 on a 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 of proceedings does not indicate that the applicant departed the United States on November 10, 1999, as claimed by the Director. Therefore, the AAO finds that the applicant did not reenter the United States illegally after having been removed from the United States under an outstanding order of removal. However, the applicant has been ordered removed from the United States and failed to comply with that order. The AAO notes that, on October 19, 1999, an immigration judge denied the applicant's motion to reopen and remand for a change of status under the approved Form I-140. The applicant appealed this decision to the Board of Immigration Appeals and the 9<sup>th</sup> Circuit Court of Appeals. All appeals have been dismissed or denied. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and, therefore, must receive permission to reapply for admission.

On May 11, 1992, the applicant was convicted of burglary, receiving stolen property, forging the name on an access card and theft by use of access card in the Municipal Court of Citrus, California. The applicant was sentenced to 24 months probation and 23 days of jail. On November 29, 1997, the applicant's finding of guilt was set aside and the complaints were dismissed by the municipal court because he had fulfilled the conditions of probation. It is noted that these are still convictions for immigration purposes.

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 three U.S. citizen daughters, and the approval of an immigrant petition for alien worker.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States, conviction of multiple crimes involving moral turpitude, attempt to procure a fraudulent Guatemalan birth certificate in order to file a fraudulent asylum application, non-compliance with a 1995 order of voluntary departure, non-compliance with a 1997 order of deportation and illegally obtained work experience in the United States, without which he would not be eligible for the immigrant petition for alien worker.

The applicant in the instant case not only has convictions for multiple crimes involving moral turpitude, but has, through his multiple immigration violations and attempts to defraud the immigration system, not shown a hint of reformation of character. Additionally, the applicant's eligibility for the immigrant visa is based solely on work experience he gained while disregarding and abusing the laws of the United States. The applicant's actions in these matters 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.