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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

714

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

AUG 16 2008

IN RE:

Applicant:

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:

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, Chief  
Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who entered the United States without a lawful admission or parole in June 1985. On September 9, 1991, the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant and on December 27, 1991, an Order to Show Cause (OSC) for a hearing before an immigration judge was issued. On May 31, 1990, an immigration judge found the applicant deportable pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act), for having entered the United States without inspection, and granted him voluntary departure until October 2, 1992, in lieu of deportation. The record reflects that the applicant applied for and received numerous extensions of his voluntary departure order. The applicant's last voluntary departure order was extended until September 14, 2003, based on an Application for Family Unity Benefits (Form I-817). On November 10, 2003, a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that he appear at the Phoenix, Arizona, Immigration and Customs Enforcement (ICE) office. The applicant failed to appear as requested and on October 15, 2004, he was deported from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his Lawful Permanent Resident (LPR) father. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 LPR father.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *See Director's Decision* dated June 29, 2005.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens 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 . . . [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 Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, the applicant states that he believes that there is adequate information in the file to approve the application. The applicant states that based on recent decisions by the Ninth Circuit Court of Appeals, voluntary departure explanations have to be very specific. In addition, the applicant states that he was seven years old when he was granted voluntary departure and it is not clear whether his family was in court when the instructions were given to him about his obligations under a voluntary departure order. Additionally, the applicant states that he is presently residing in Mexico and wishes to be allowed to reenter the United States in order to reside with his family.

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 AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his LPR father and step-mother, an approved Form I-130, and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial illegal entry into the United States in June 1985, and his failure to depart the United States after his voluntary departure order became a final order of deportation. The AAO notes that the applicant was an infant when he entered the United States without inspection and, therefore, cannot be held accountable for his illegally entry. In addition, the AAO notes that the applicant was only eighteen and one half years old when he failed to appear at an ICE office, after a Form I-166 was forwarded to him. The majority of his presence in the United States was as a minor and with legal permission to remain.

While the applicant's periods of unauthorized presence cannot be condoned, the AAO finds that given all of the circumstances in the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained and the application approved.