



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: JUL 20 2006

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:

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, 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, Vermont 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 El Salvador who entered the United States without a lawful admission or parole on August 24, 1999. On the same date the applicant was apprehended by the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). On August 28, 1999, the applicant was served with a Notice to Appear (NTA) for a removal hearing before an immigration judge. On September 1, 1999, the applicant was released on her own recognizance. On April 28, 2000, an immigration judge found the applicant removable pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(A)(i) for having been present in the United States without being admitted or paroled, and granted her voluntary departure until August 26, 2000, in lieu of removal. The applicant failed to surrender for removal or depart from the United States. The applicant's failure to depart on or prior to August 26, 2000, changed the voluntary departure order to an order of removal. The applicant applied for and received Temporary Protective Status (TPS), and was issued employment authorization cards. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her Lawful Permanent Resident (LPR) mother. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 her LPR mother.

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 May 19, 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, 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 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.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (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 in others; (2) has added a bar to admissibility for aliens who are unlawfully present in the United States; (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, the applicant states that she always complied with the mandate to report once a month to the INS, until she was told by her attorney to stop. In addition, the applicant states that she first entered the United States when she was 16 years of age in search of her mother. She states she is a good citizen, has no criminal record, and is not illegally in the United States because she was granted TPS. Finally, the applicant requests that the decision be reconsidered so she can obtain lawful permanent resident status and live in the United States.

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.

*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.*

In his decision the Director stated that the unfavorable factors in the applicant's case include her entry without inspection, the fact that the record failed to show that she reported once a month to the INS as mandated by the order of release on recognizance, that the record does not show if she appeared at all of her scheduled hearings, the fact the a bond was breached, the fact that she did not depart the United States after she was granted voluntary departure, the fact that she failed to notify the Service of her change of address, and the fact that she is still in the United States illegally.

Absent supporting documentation, the AAO is unable to confirm the Director's conclusion that the applicant failed to report once a month to INS or that she failed to appear at all scheduled hearings. The record of proceedings does support the Director's statement that the applicant's bond was breached. In addition, the

applicant has not changed her address since the date of her release on September 1, 1999, and, therefore, the Director's statement that she did not notify the Service of her change of address is not accurate, and will not be considered an unfavorable factor. Finally, the AAO finds that the applicant is not in the United States illegally. The applicant applied for and was granted TPS status and, therefore, she was allowed to remain in the United States in a legal status.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, her LPR mother, an approved Form I-130, the prospect of general hardship to her family, the absence of any criminal record, a letter of recommendation, and the fact that she applied for and was issued EADs since December 6, 2001.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, her failure to depart the United States after she was granted voluntary departure and her periods of unauthorized presence.

While the applicant's entry without inspection in the United States and her subsequent failure to depart the United States after being granted voluntary departure cannot be condoned, the AAO finds that given all of the circumstances of 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.

**ORDER:** The appeal of the denial of the Form I-212 is sustained and the application approved.