



U.S. Citizenship
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Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 19 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.

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 dismissed.

The applicant is a native and citizen of Mexico who, on October 22, 1999, at the San Ysidro, California, Port of Entry, applied for admission into the United States. The applicant presented a counterfeit Arrival-Departure Record (Form I-94), with a stamp indicating that he had been granted permanent resident status. 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 fraud, and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or other valid entry document. Consequently, on the same date 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). On October 18, 2001, the applicant applied for admission into the United States by presenting a B1/B2 visa, Border Crossing Card (Form DSP-150). The applicant was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act, and was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 as a nonimmigrant visitor.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones and the Form I-212 accordingly. *See Director's Decision* dated April 20, 2005.

Section 212(a)(9)(A) 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.

. . . .

(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.

On appeal, the applicant states that his attempt to enter the United States was at the Otay Mesa Port of Entry and not the San Ysidro Port of Entry as stated by the Director. In addition, the applicant states that he was in possession of a valid document issued by the Immigration and Naturalization Service (now Citizenship and

Immigration Services (CIS)) and he does not understand why in the decision it is stated that he was in possession of a counterfeit document. Furthermore, the applicant states that he needs to travel to the United States in order to buy merchandise for his business so he can support his family.

The record of proceedings clearly reflects that the applicant attempted twice to enter the United States. The first time on October 22, 1999, at the San Ysidro Port of Entry, in possession of a counterfeit Form I-94. It is unclear from the record of proceedings whether on October 19, 2001, he applied for admission at the San Ysidro or the Otay Mesa Port of Entry, or if he presented a counterfeit document as stated by the Director. A notation in the record of proceedings states that the applicant had fraudulent documents. Although the record of proceedings is not clear on the exact circumstances of the applicant's application for admission, the fact remains that on October 19, 2001, he was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act, and was removed from the United States. Therefore, the applicant must receive permission to reapply for admission.

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.*

No favorable factors on the applicant's behalf are found by the AAO.

The AAO finds that the unfavorable factors in this case include the applicant's attempt to enter the United States by fraud, and his attempt to enter the United States after a previous immigration violation without permission to reapply for admission.

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 the applicant 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.