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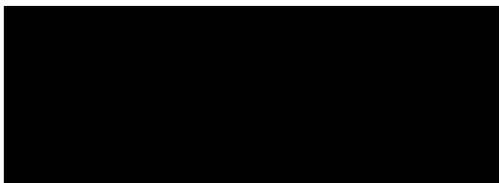
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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FILE: Office: VERMONT SERVICE CENTER Date: **MAY 11 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 was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Canada who was admitted into the United States as a Lawful Permanent Resident (LPR) on October 3, 1974. On August 15, 1992, in the Superior Court in the city Cambridge, County of Middlesex, the applicant was convicted of the offense of breaking and entering with intent to commit a felony. On March 15, 1993, the applicant was sentenced to a minimum of eight-years and maximum of ten-years imprisonment. On June 18, 1993, an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was issued. On January 24, 1996, an immigration judge ordered the applicant deported from the United States pursuant to section 241(a)(2)(A)(iii)<sup>1</sup> of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony at any time after admission. On January 31, 1996, a Warrant of Deportation (Form I-205) was issued. The applicant was apprehended and, based on the Form I-205, she was deported from the United States on April 4, 1996. The AAO notes that the applicant has an extensive criminal history with at least 165 adult arraignments and several juvenile arraignments. The applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 and reside with her U.S. citizen parents.

The Acting Director determined that the applicant is not eligible for any exception or waiver under the Act and denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *See Acting Director's Decision* dated June 29, 2004.

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.

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<sup>1</sup> Now section 237(a)(2)(A)(iii) of the Act.

On appeal, the applicant's mother requests that the applicant be permitted to return to her home and family. In addition, the applicant's mother requests that the applicant's inadmissibility be reduced to 10 years and if not possible, the applicant be permitted to visit the United States during family emergencies or holidays. The applicant's mother further states that the applicant has several medical issues, which cannot be addressed in Canada because of financial problems in Canada's medical system. Furthermore, the applicant's mother states that both she and the applicant's father have medical issues and need the applicant's assistance. Finally, the applicant's mother states that her attorney misrepresented the applicant in court and pled guilty to all offenses even though she had not committed many of them.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant can benefit from a waiver of inadmissibility due to her criminal conviction. Based on the applicant's conviction she is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. In the instant case the applicant's conviction was found to be an aggravated felony and the applicant was deported based on the aggravated felony charge.

Section 212(h) of the Act provides, in pertinent part, that:

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States.

As noted above, the applicant was granted LPR status on October 3, 1974. Since the applicant was previously admitted for lawful permanent residence and has been convicted of an aggravated felony, no waiver is available to her under section 212(h) of the Act.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

No purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.