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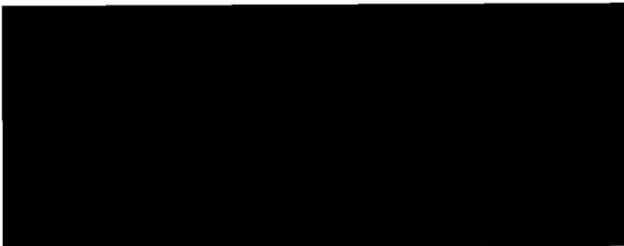
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 06 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:



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 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 citizen of Pakistan who was admitted into the United States as a Lawful Permanent Resident (LPR) on October 16, 1984. On November 26, 1991, in the United States District Court of New Jersey, the applicant was sentenced to 20 months imprisonment for the offense of conspiracy to obstruct the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) pursuant to 18 U.S.C. § 371. On January 17, 1996, in the United States District Court Eastern District of New York, the applicant was placed on five years probation for the offense of possession of a counterfeit resident alien card in violation of 18 U.S.C. § 1546(a). On August 10, 1992, an Order to Show Cause (OSC) for a hearing before an immigration judge was issued. On March 7, 1994, an immigration judge ordered the applicant deported to Pakistan pursuant to section 241(a)(2)(A)(i)¹ of the Immigration and Nationality Act (the Act), for having been convicted of a crime involving moral turpitude. An appeal filed with the Board of Immigration Appeals (BIA) was summarily dismissed on July 29, 1994. On January 30, 1996, the applicant was removed from the United States pursuant to section 241(a)(2)(A)(i) of the Act. 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 family.

The Acting Director determined that the applicant is not eligible for any exception or waiver under the Act and denied the Form I-212 accordingly. *See Acting Director's Decision* dated September 15, 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.

¹ Now section 237(a)(2)(A)(i) of the Act.

On appeal, counsel states that the Acting Director erroneously denied the Form I-212 on the ground that the applicant had been convicted of an aggravated felony and thus no waiver is available to him pursuant to section 212(h) of the Act. Counsel does not dispute the fact that the applicant was convicted of the offense of possession of a counterfeit alien resident card in violation of 18 U.S.C. § 1546(a), but states that he was not sentenced to 20 months imprisonment, as stated in the decision, but rather to probation for a period of five years, with a special condition that he depart from the United States by January 31, 1996, and would not reenter the United States during a five-year period. Finally, counsel states that the Service Center's determination that the applicant is statutorily ineligible for a waiver is incorrect as matter of fact and law and the decision flouts the order of the court.

Before the AAO can weigh the discretionary factors in this case, it must first determine if the applicant can benefit from a waiver of inadmissibility due to his criminal conviction. Based on the applicant's conviction he is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude. As noted above, the applicant was convicted on November 26, 1991, of the offense of conspiracy to obstruct the Immigration and Naturalization Service. The record of proceeding reflects that the court made a determination that the applicant caused a loss of \$220,000 to the victim (the U.S. government).

Section 101(a)(43) of the Act defines the term "aggravated felony" as:

(M) an offense that-

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000.

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The applicant was convicted of conspiracy for an offense that involved fraud in which the loss exceeded \$10,000. The sentence imposed is irrelevant. Thus the applicant's conviction is an aggravated felony for immigration purposes.

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 lawful permanent resident status on October 16, 1984. Since the applicant was previously admitted for lawful permanent residence and he has been convicted of an aggravated felony no waiver is available to him 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.