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FILE: Office: CALIFORNIA SERVICE CENTER Date: **NOV 17 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 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 November 22, 1997, at the San Ysidro, California, Port of Entry, applied for admission into the United States. The applicant presented a valid Mexican passport with a counterfeit stamp indicating that he had been granted lawful permanent resident status. He 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. Consequently, on November 23, 1997, 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). The record reflects that the applicant reentered the United States in December 1997 without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). The record further reflects that an Immigrant Petition for Alien Relative (Form I-130) has been filed on his behalf by his U.S. citizen sibling. The record does not reflect that the Form I-130 was approved. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 remain in the United States and reside with his U.S. citizen children and sibling, and his Lawful Permanent Resident (LPR) mother and siblings.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones and denied the Form I-212 accordingly. See *Director's Decision* dated January 20, 2006.

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 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, and (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 deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, counsel submits a brief in which he does not dispute the fact that the applicant attempted to enter the United States in November 1997, but states that no legal action was taken against him other than his immediate return to Mexico. In addition, counsel states that the applicant did not present any false documentation nor did he commit any fraud. Counsel further states that the applicant: ". . . has never been required to attend an immigration hearing nor has his [sic] been removed through the [sic] immigration proceedings." Additionally, counsel asserts that the applicant's removal will cause extreme hardship to his mother, siblings and children whom he helps financially. Furthermore, counsel states that the applicant has resided in the United States for a period over 16 years and refers to section 212(h)(1)(B) of the Act which may waive inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Finally, counsel states that the applicant's appeal is based on the fact that his removal will cause undue hardship to his U.S. citizen children and his immediate family.

The applicant was ordered removed from the United States pursuant to section 235(b)(1) of the Act, which permits an immigration officer to issue an order of removal if an alien is found inadmissible under section 212(a)(6)(C) of the Act, without further hearing or review. The applicant was personally served with a Notice and Order of Expedited Removal (Form I-860). There was no requirement that he appear before an immigration judge.

In addition, the record of proceeding contains a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867A) in which the applicant admitted under oath that he paid \$100 to an individual in Mexico in order to put a stamp indicating LPR status in his passport. The Form I-867A indicates that his statement was read to him before he signed it and that his signature indicated that the statement is a full, true and correct record of his interrogation. Based on the foregoing, counsel's assertion that the applicant did not present false documentation or that he did not commit fraud is not persuasive.

It is unclear why counsel refers to section 212(h)(1)(B) of the Act which may waive inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Section 212(a)(2)(A)(i)(I) of the Act refers to individuals who have been convicted of, or who admit having committed, a crime involving moral turpitude. The applicant in the present case has not been found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act and, therefore, he does not require a waiver under section 212(h) of the Act.

The proceeding in the present case is limited to the application for permission to reapply for admission into the United States after deportation or removal and it is limited to the issue of whether or not the applicant meets the requirements necessary for the ground of inadmissibility under section 212(a)(9)(A)(i) of the Act to be waived. This is the only issue that will be discussed.

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 U.S. citizen children and brother, and his LPR mother and siblings, the prospect of general hardship to his family and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's attempt to enter the United States by fraud and willful misrepresentation of a material fact, his illegal reentry after being expeditiously removed, his employment without authorization and his lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee, supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

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 eligibility 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.