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U.S. Citizenship  
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 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.

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, California 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 Fiji who entered the United States without a lawful admission or parole on October 15, 1991. On August 21, 1992, the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant's parents and on the same date an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was issued. The applicant was a dependent on a Request for Asylum in the United States (Form I-589) filed by his father on November 6, 1992. On August 31, 1995, an immigration judge denied the applicant's father's request for asylum and withholding of deportation, and his request for voluntary departure. The immigration judge ordered the applicant deported pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act), for entering the United States without inspection. On July 15, 1998, the Board of Immigration Appeals (BIA) affirmed the immigration judge's decision. On September 21, 1999, a petition for review of the BIA's order, filed with the United States Court of Appeals for the Ninth Circuit, was denied. On December 20, 1999, a Warrant of Deportation (Form I-205) was issued. On July 18, 2000, a Notice to Deportable Alien (Form I-166) was forwarded to the applicant's father requesting that the family appear at the Sacramento, California sub-office in order to be removed from the United States. The applicant failed to appear as requested. The applicant's father filed a Motion to Reopen (MTR) with the BIA, which was denied on July 26, 2002, and a subsequent MTR was denied on October 24, 2002. On July 15, 2004, the applicant appeared at the Sacramento, California sub-office in connection with a Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. Based on the Form I-205, the applicant was apprehended and placed in custody. An application for stay of deportation was denied on August 23, 2004 and, consequently, on August 31, 2004, the applicant was removed from the United States. 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 United States and reside with his U.S. citizen spouse.

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 October 20, 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 deterring 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 in his decision the Director stated that the unfavorable factors outweighed the favorable ones but did not take into consideration that the majority of the unfavorable factors occurred when he was a minor and could not make his own decisions. In addition, the applicant states that when he first entered the United States in 1991 he was only ten (10) years old. In addition, the applicant states that the appeals and reviews filed on his behalf were without his consent. The applicant further states that he was never informed of the requirement to surrender to CIS for removal. He further alleges that he would never intentionally disobey the immigration laws. Additionally, he states that he needs to be in the United States to support his spouse physically, emotionally and financially.

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 be a condonation of the alien's acts and could encourage others to enter without being admitted and work in the United States 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 applicant's unlawful entry and initial failure to surrender are not unfavorable factors as noted in the Director's decision. The applicant was a dependent on his father's asylum application, and although it was subsequently denied, he was entitled to exhaust all means available to him by law in an effort to legalize his status in the United States. The various appeals conferred on him a status that allowed him to remain in the United States while they were pending. The applicant cannot be held accountable for his unlawful entry or his initial failure to appear because at the time he was a minor.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his U.S. citizen spouse, and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's failure to depart the United States after he was no longer a minor.

While the applicant's actions 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. Accordingly, the appeal will be sustained and the application approved.

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