

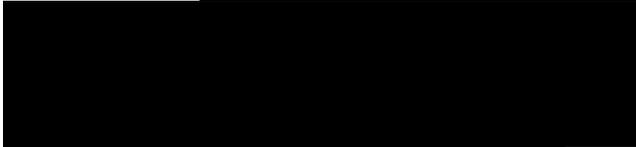
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **SEP 25 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 El Salvador who entered the United States without a lawful admission or parole on or about September 22, 1991. On August 27, 1992, the applicant filed a Request for Asylum in the United States (Form I-589) with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). On October 16, 1992, the applicant was interviewed for asylum status. On December 22, 1993, her application was denied and an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was issued. On April 19, 1994, the applicant failed to appear for a deportation hearing and she was subsequently ordered deported in absentia by an immigration judge, pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act) for having entered the United States without inspection. The applicant failed to surrender for removal or depart from the United States. On September 10, 1994, a Warrant of Deportation (Form I-205) was issued. The record reflects that on April 8, 1998, in the Municipal Court of Los Angeles, West Los Angeles Judicial, County of Los Angeles, State of California, the applicant was convicted of the offense of willful cruelty to a child. She is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant 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.

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 August 22, 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 . . . [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.

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 for others, (2) has added a bar, with limited exceptions, 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/or from being present in the United States without a lawful admission or parole.

On appeal, the applicant states that she acknowledges the mistake she made on April 8, 1998. In addition, the applicant states that if she is removed from the United States, her children will remain in the United States and she will suffer psychologically and economically because she still supports them. Additionally, the applicant states that she will suffer extreme hardship if she is deported. The applicant further states that she never had the opportunity to explain what really happened during the April 8, 1998, incident than led to her conviction. Finally, the applicant requests that the appeal be reviewed so that she can obtain an employment authorization card.

The AAO notes that the applicant was ordered deported on April 19, 1994. On various applications the applicant states that she entered the United States on January 22, 1995, without a lawful admission or parole, and, therefore, although the record of proceedings does not contain documentary evidence that the applicant departed the United States it seems that she self deported and reentered illegally. In addition, the AAO notes that the applicant states that her children will remain in the United States and she needs to support them. Their immigration status in the United State is unknown. Additionally, this office does not have jurisdiction over the applicant's conviction. The proceeding in the present case is for an application for permission to reapply for admission into the United States after deportation or removal and, therefore, the AAO will not discuss the applicant's potential grounds of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. These proceedings are 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)(ii) of the Act to be waived.

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 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 favorable factors in his case are the fact that the applicant has been granted Temporary Protected Status (TPS), indicating that the United States government finds conditions in El Salvador such that she warrants temporary protection in the United States, and employment authorization pursuant to the TPS program. However, since the temporary protection will be offered for as long as the United States determines it is necessary, this factor does not outweigh the negative factors.

The AAO finds that the unfavorable factors in this case include the applicant's initial illegal entry into the United States, her failure to appear for deportation proceedings, her failure to depart the United States after a final deportation order was issued, her conviction of a crime involving moral turpitude, her periods of employment without authorization, her lengthy presence in the United States without a lawful admission or parole, and the fact that she has no immigrant visa petition filed on her behalf. 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 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.