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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: APR 03 2007

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 Mexico who, on February 22, 1996, at the Otay Mesa, California Port of Entry attempted to smuggle 130 lbs. of marijuana into the United States. The applicant was found excludable under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed an act in violation of law or regulation relating to a controlled substance, and section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C) for being an illicit trafficker of a controlled substance. The applicant was placed in exclusion proceedings. On June 18, 1997, the applicant failed to appear for the exclusion hearing and an immigration judge subsequently ordered her excluded and deported, *in absentia*. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 as a nonimmigrant visitor.

The Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, and not eligible for any exception or waiver. In addition, the Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated April 26, 2006.

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.

On appeal, the applicant states that she is married, resides and works in Mexico, never tried to enter the United States illegally, has family and friends in the United States and wishes to visit the United States. The

applicant submits copies of documentation regarding her employment and residence in Mexico and a copy of her marriage certificate.

The AAO finds that the Director erred in stating that the applicant is not eligible for any exception under the Act. The applicant in the present case filed a Form I-212 in order to be eligible to apply for a non-immigrant visa. If the applicant's Form I-212 were to be granted she would be eligible to file a waiver of her ground of inadmissibility pursuant to section 212(d)(3) of the Act. The Form I-212 must be adjudicated pursuant to section 212(a)(9)(A)(iii) of the Act and the discretionary factors must be considered.

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.

The favorable factors in this matter are the applicant's family ties in the United States, her brother and cousin, and the fact that she is gainfully employed in Mexico.

The AAO finds that the unfavorable factor in this case is the applicant's involvement in the trafficking of a controlled substance.

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 one.

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.