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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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44

FILE:

Office: PORTLAND, ME

Date:

AUG 14 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:

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 District Director, Portland, Maine, denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who, on October 2, 2006, applied for admission to the United States at the Calais, Maine port of entry. The record indicates that the applicant was found inadmissible to the United States 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) as an alien who by fraud or willful misrepresentation of a material fact has sought to procure admission to the United States and section 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid unexpired entry document required by the Act and/or a valid unexpired passport or other suitable travel document. He was expeditiously removed from the United States the same day pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant was returned to Canada where he has since resided. On March 7, 2007, the applicant filed the Form I-212.

The district director denied the Form I-212 as a matter of discretion, based on his determination that the applicant was inadmissible to the United States under sections 212(a)(6)(C)(i) and (7)(A)(i)(I) and had not been granted a waiver of these inadmissibilities. The district director also denied the application because Citizenship and Immigration Services (CIS) had not yet adjudicated the Form I-129, Petition for Nonimmigrant Worker, filed on the applicant's behalf and the applicant, therefore, had not established eligibility for the status he was seeking at the time of his attempted entry. *See District Director's Decision*, dated March 27, 2007.

On appeal, counsel contends that denial of the Form I-212 is not based in fact or law. He asserts that the applicant seeks to have the Form I-212 approved because he did not make any misrepresentations upon application for entry and would like to seek entry to the United States in L-1 or some other status. *See Counsel's Brief*, dated April 30, 2007.

The evidence submitted to establish the veracity of the applicant's statements at the port of entry includes: affidavits sworn by the applicant and the president of Global Consulting Group, the U.S. firm that filed the Form I-129 on behalf of the applicant, dated January 29, 2007 and November 29, 2006 respectively; material from the website at www.geocities.com, which counsel indicates is a "bogus website" for the Global Consulting Group, Inc. (Global Consulting), and is, counsel asserts, the basis for the immigration inspector's finding of misrepresentation; material from www.bestusajobs.com, the actual website of the Global Consulting; printouts from the website of the New Brunswick Corporate Affairs Registry Database indicating that IT Professional Staffing CA Inc. (IT Staffing), the Canadian affiliate of the Global Consulting, has been a Canadian business since 2000 and showing a change of address for its registered office from Moncton to Dieppe, New Brunswick between October 20 and October 31, 2006; a copy of New Brunswick Form SN0257/45-4105, Notice of Registered Office or Notice of Change of Registered Office showing a change of address for the registered office of IT Professional Staffing from Moncton to Dieppe, New Brunswick, dated October 28, 2006; copies of Profile Reports, New Brunswick Corporate Affairs, dated June 10, 2004 and May 30, 2006; an August 18, 2000 letter from the Canada Customs and Revenue Agency to IT Staffing CA, Inc. regarding the assignment of its business number; copies of New Brunswick Form TN# 687727, Annual Return, for IT Staffing from 2003 through 2006, including an Annual Return for 2005 showing IT Staffing to have temporarily changed its registered office to a location in Windsor, Ontario; documentation of a shipment of computer equipment and furniture from Global Consulting to IT Staffing in November 2005; a copy of the Articles of Incorporation for IT Staffing, filed July 19, 2000; a Certificate of Incorporation for IT Staffing,

dated July 19, 2000; a notice from the Ontario Ministry of Consumer and Business Services to IT staffing, providing it with an Ontario Corporation Number, dated November 22, 2005; banking records for IT Staffing for the period December 30, 2005 through July 31, 2006; a 2005 lease agreement between IT Staffing and Partners Investment Realty, Inc. for a property in Windsor, Ontario, dated August 11, 2005; and a lease agreement between Charles Vautour and IT Staffing for a property in Moncton, New Brunswick, dated September 1, 2006.

Evidence provided with respect to the applicant includes copies of: his Canadian social insurance card, his New Brunswick Medicare Assurance-malade card; two New Brunswick driver's licenses; an application for an Ontario driver's license, dated March 16, 2003; a Notice of Assessment from the Canada Customs and Revenue Agency, dated December 28, 2005; Goods and Services Tax/Harmonized Sales Tax (GST/HST) Credit forms, dated January 6, 2006 and July 5, 2006; a receipt notice for the applicant's tax and benefit return for 2003, dated January 27, 2006; a copy of the applicant's Statement of Remuneration Paid for 2006, indicating his employer as IT Staffing; a Visa credit card; and the applicant's cable bill as of June 2, 2006.

At the time of the applicant's October 2, 2006 interview, the immigration inspector concluded that he had lied when he maintained that Global Consulting was continuing to operate a business, IT Staffing, in Canada and, again, when he testified that he was not living and working in Cincinnati, Ohio.

In the January 29, 2007 affidavit he submitted at the time of filing, the applicant states that the website relied upon by the immigration inspector to establish his employment in Ohio is not a website that is associated with Global Consulting and is "full of misinformation about the company." He points to the website's identification of him as [REDACTED], a name he has never used and which is not accompanied by a last name as further proof that the website was created by an unknown unauthorized individual and is not proof that he has been employed in Ohio. The applicant asserts that he lives and works in Canada.

In his affidavit, the applicant also states that IT Staffing has always maintained a corporate presence in Canada, but that at the time of his October 2, 2006 interview, the company was in transition, moving from its office space in Windsor, Ontario to new space in Moncton, New Brunswick. During the transition period, he states, he worked from home. The applicant contends that the transcript of his interview makes it clear that he indicated to the inspector that the Windsor facility had closed in August 2006.

While the AAO notes the applicant's statements, as well as the evidence submitted to establish his residence and employment in Canada, it finds them insufficient to overcome the immigration inspector's determination that he had been working and residing in the United States. The copies of the applicant's New Brunswick driver's licenses, his application for an Ontario's driver's license, tax-related records, a cable bill mailed to the applicant at a Windsor, Ontario address, and his 2006 income statement from IT Staffing are not proof that he physically resided in Canada or was employed there. With the exception of a single cable bill from June 2006, which indicates the applicant also had cable charges in May, the record offers no evidence in the form of rent payments, utility bills, receipts, etc. that would establish the applicant's physical residence in Canada. Moreover, the Windsor address on the cable bill is not the Windsor address at which the applicant stated he had previously lived when he was interviewed on October 2, 2006. The address on the cable bill is [REDACTED]; the address given by the applicant at his interview was that of the IT Staffing facility at 1398 Ouellette. The AAO also notes that the 2006 income statement for the applicant was mailed to him at [REDACTED] Dieppe, New Brunswick, the address that the New Brunswick Corporate Affairs Registry Database indicates, as of October 31, 2006, is the address for IT Staffing offices in Canada.

The record also fails to establish that, at the time the applicant applied for admission to the United States, IT Staffing was maintaining business operations in Canada. Although the printouts from the New Brunswick Corporate Affairs Registry Database demonstrate that IT Staffing was registered as a Canadian business in 2006, they fail to establish that it was actually conducting business in Canada at the time of the applicant's October 2, 2006 interview. The annual returns and profile reports documenting IT Staffing's existence are also insufficient proof of its business operations. Only the documentation of Global Consulting's shipment of computer equipment and furniture to IT Staffing in Windsor, Ontario in November 2005, IT Staffing's lease of office space in Windsor, Ontario at \$5,000/month to conduct English language training; its lease of space at 110 Connolly Street, Moncton, New Brunswick at \$300/month for recruitment purposes; and its checking account statements for the period December 30, 2006 through July 31, 2006 demonstrate actual business activity on the part of IT Staffing.

This evidence, however, is insufficient to establish that IT Staffing was still in business when the applicant was interviewed on October 2, 2006. The bank statements provided by the applicant, which cover only the period December 30, 2005 through July 31, 2006, indicate business income for IT Staffing until June 19, 2006 and outgoing business payments through June 28, 2006. The record contains no evidence of income after June 2006. There are no business contracts or letters; no documentation of payments received. Without such evidence, the year-long lease of training space in Windsor, Ontario that began on September 1, 2005 and the month-to-month lease signed on September 1, 2006 for recruiting space in Moncton, New Brunswick are insufficient proof that IT Staffing was engaged in training or recruiting activities during the specified periods. The AAO notes that the applicant on appeal does not submit a copy of any of IT Staffing's tax filings with the Canadian Government, which could provide a definitive picture of its business income and expenditures since its incorporation.

Accordingly, based on the record before it, the AAO concludes that the applicant has failed to overcome the findings of the immigration inspector that rendered him inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. While the applicant may seek a waiver of his inadmissibility under section 212(a)(6)(C)(i) of the Act, his eligibility for that waiver will not be considered in this proceeding. Such a waiver request is appropriately raised at the time the applicant applies for a visa. In the present case, the applicant has filed the Form I-212 and, therefore, seeks an exemption from the inadmissibility created as a result of his removal from the United States on October 2, 2006. under section 236(b)(1) of the Act.

Section 212(a)(9) 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.

(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 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.

On appeal, counsel contends that the district director erred in denying the Form I-212 based on the applicant's inadmissibility when the basis for the filing of the Form I-212 is the applicant's inadmissibility. However, as just discussed, the inadmissibility addressed by the filing of the Form I-212 is that set forth under section 212(a)(9)(A)(ii) of the Act, based on the applicant's prior removal from the United States. The inadmissibility referenced by the district director in denying the Form I-212 is the bar to admission under section 212(a)(6)(C)(i) of the Act, triggered by the applicant's misrepresentation at the port of entry. Therefore, in reaching his decision on whether to exempt the applicant from the bar under section 212(a)(9)(A)(iii), the district director appropriately considered the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act, viewing it as a negative factor in his exercise of the Secretary's discretion.

The AAO does not, however, agree with the district director's additional conclusion that the approval of the Form I-212 was also dependent on the applicant establishing his eligibility for the status he was seeking at the time of his attempted entry. The fact that the applicant was not the beneficiary of an approved Form I-129 at the time he filed the Form I-212 is not a basis for denial. The AAO notes, however, that an approved Form I-129 at the time of filing would have served as a positive factor in the exercise of the Secretary's discretion.

The AAO now turns to a consideration of the evidence of record and the extent to which it supports the applicant's request for an exemption under section 212(a)(9)(A)(iii) of the Act.

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 or Removal:

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.

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.*

At the time of filing, counsel submitted affidavits from the applicant and the president of Global Consulting rebutting the charges of misrepresentation against the applicant. Counsel also, as previously discussed, provided evidence to establish the operation of IT Staffing in Canada. Although counsel contended that the denial of the Form I-212 filed by the applicant disrupted Global Consulting's business operations, he offered no evidence to support this claim and the affidavit sworn by the president of Global Consulting did not address this issue.

The favorable factors in the present case are the absence of any criminal history in the record, the applicant's payment of Canadian taxes, and proof of his employment with IT Staffing/Global Consulting, based on Canadian Government Form RC-02-107, Statement of Remuneration Paid, during the 2006 tax year. Although the AAO, as noted above, would also have considered an approved Form I-129 to be a factor in the applicant's favor in this proceeding, counsel on appeal reports that the petition benefiting the applicant has been denied. Counsel does not indicate that the applicant is the beneficiary of any other petitions.

The AAO finds that the unfavorable factors in this case to include the applicant's inadmissibility pursuant to sections 212(a)(6)(C)(i) and (7)(A)(i)(II) of the Act and his lack of any positive equities in the United States.

Based on its review of the record, the AAO finds the factors that argue for a favorable exercise of the Secretary's discretion to be outweighed by the unfavorable factors. It particularly notes that the record offers no evidence to establish that the denial of the Form I-212 would result in any personal or professional hardship to the applicant. Neither does it establish that there is a need for the applicant's services in the United States that would go unmet because of his inadmissibility under section 212(a)(9)(A)(ii) of the Act. Accordingly, the record fails to establish the applicant's eligibility for an exemption under section 212(a)(9)(A)(iii) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. In the present matter, the applicant has failed to meet that burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.