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

U.S. Citizenship
and Immigration
Services

H4

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 29 2007

IN RE: Applicant: [redacted]

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:

[redacted]

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 Acting Director, Vermont Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of the former USSR and a citizen of Greece who entered the United States without a lawful admission or parole on July 28, 1971. On June 4, 1973, the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant and an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was served on him. On June 5, 1973, an immigration judge found the applicant deportable pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act), for entering the United States without inspection. Consequently, on June 6, 1973, the applicant was deported to Greece. The record reflects that the applicant reentered the United States on or about August 28, 1973, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 of Act, 8 U.S.C. § 1326 (a felony). On December 23, 1973, the applicant was apprehended and on OSC was served on him on December 24, 1974. On February 15, 1974, the applicant was convicted pursuant 8 U.S.C. § 1326 and he was sentenced to two years imprisonment. The applicant was removed from the United States on March 6, 1974. On September 18, 1974, the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 of Act. Once again the applicant was apprehended and on OSC was served on him on September 19, 1974. The applicant was permitted to return to his vessel under safeguards and departed from the United States. On January 6, 1976, the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 of Act. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen daughter. 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 now 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 daughter.

The Acting Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones and denied the Form I-212 accordingly. *See Acting Director's Decision* dated January 12, 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-
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> (I) has been ordered removed under section 240 or any other provision of law, or
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> (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 aliens 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 states that the Director abused her discretion in denying the Form I-212 and that she ignored substantial equities and did not give enough weight to the favorable factors in this case. In addition, on the Notice of Appeal to the AAO (Form I-290B) counsel states that he will be submitting a brief and/or evidence to the AAO within 30 days. On March 30, 2006, counsel submitted a letter in which he informed the AAO that he inadvertently checked the box to send a brief and/or evidence at a later date and requested that the matter rest on the record as it stands. In his letter counsel stated that the applicant has been suffering from AIDS for the last decade. In addition, counsel stated that the favorable equities outweigh the negative ones and that the applicant warrants a favorable exercise of discretion.

Although counsel states that the applicant suffers from AIDS he submits no documentation to support his assertion. In addition, the record contains no evidence to indicate that adequate health care and medication for the applicant are unavailable in Greece. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 daughter, an approved Form I-130, and the absence of a criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial illegal entry into the United States, his illegal reentries subsequent to his deportations, his unauthorized employment, and his lengthy presence in the United States without a lawful admission or parole. The record of proceeding reflects that the applicant has shown a complete disregard for the immigration laws of the United States. 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 factors.

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.