

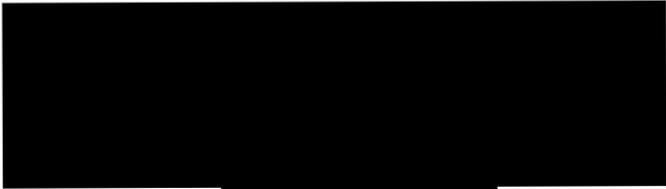
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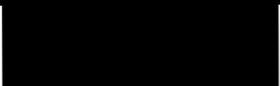
U.S. Citizenship  
and Immigration  
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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 29 2007

IN RE:

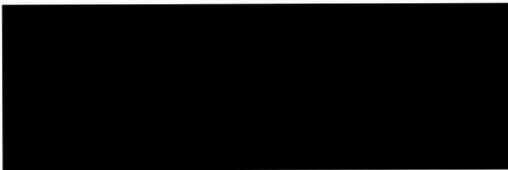
Applicant:



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 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 and citizen of the Dominican Republic who entered the United States on or about November 18, 1987. On March 25, 1997, Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) encountered the applicant after he was released from the Adult Correction Institution, Cranston, RI. On the same date, an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was served on him. On September 10, 1997, the applicant failed to appear for the deportation hearing and he 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 remained in the United States longer than permitted. On October 31, 1997, a Warrant of Removal/Deportation (Form I-205) was issued and on November 4, 1997, a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that he appear at the Boston District Office in order to be removed from the United States. The applicant failed to appear as requested. The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) filed by his U.S. citizen son. 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 remain in the United States and reside with his U.S. citizen son.

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-

(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 for 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, counsel submits a brief in which he states that the Acting Director abused her discretion by minimizing the applicant's favorable factors and categorizing other favorable facts as negative ones. Counsel states that during the applicant's stay in the United States he led a distinguished life. Counsel further alleges that the Acting Director did not give adequate weight to the fact that the applicant does not have a criminal record and has been working steadily. In addition, counsel states that the applicant explained in a statement that his failure to file taxes was caused by his lack of a social security number and during his lengthy time in the United States he worked continuously. Additionally, counsel states that the applicant is not a threat to the national security of the United States. Counsel further states that the Acting Director wrongly stated in the decision that the applicant has been present in the United States without a lawful admission, since the decision also states that the applicant entered the United States with a valid visa and overstayed. Furthermore, counsel states that when compared with individuals who entered the United States with false documents or without inspection, the applicant's entry should be categorized as a positive factor. Moreover, counsel states that the Service ignored its own laws, such as section 245(i) of the Act, which rewards individuals who entered illegally or with false documents by granting them legal residence status. Finally, counsel states that the Service should not minimize the applicant's conduct in the United States for almost 20 years and that the Service gave no weight to the approval of a Form I-130 on behalf of the applicant.

The AAO notes that it is unclear from the record of proceeding if the applicant entered the United States with a valid visa. Although the decision states that the applicant entered the United States with a visa, in a sworn statement dated March 25, 1997, the applicant stated the he was a crewmember on a boat, left the boat without permission and has been in the United States without permission from the Immigration and Naturalization Service. It, therefore, appears that the applicant entered the United States without authorization. Even if he did enter with a valid visa, the fact the he overstayed his period of authorized stay diminishes the weight of a legal entry. In addition, the applicant's work ethic cannot be deemed as a favorable factor since it was performed without authorization. The AAO will consider the approval of a Form I-130 as a favorable factor but it will be just one of the determining factors.

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

As noted above, it is unclear if the applicant overstayed after an initial lawful admission or if he entered the United States without a lawful admission or parole. Either way, the AAO finds that an overstay after an initial lawful admission or an illegal entry is an unfavorable factor. Additional unfavorable factors include the applicant's failure to appear for deportation proceedings, his employment without authorization and his lengthy presence in the United States without authorization. The Commissioner stated in *Matter of Lee, supra*, that 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 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.