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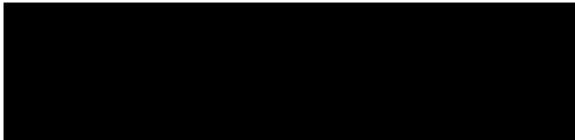
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
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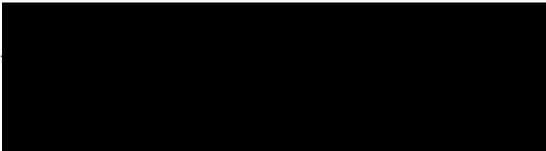


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAR 02 2007

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:



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, Texas Service Center and is now before the Administrative Appeals Office (AAO) on a second Motion to Reopen (MTR). The MTR will be granted, the AAO's previous decision will be withdrawn, the appeal will be sustained and the application approved.

The applicant is a native and citizen of Guatemala who was present in the United States without a lawful admission or parole on February 7, 1984. The Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant, and on February 8, 1984, an Order to Show Cause (OSC), for a hearing before an immigration judge was served on him. On March 2, 1984, an immigration judge ordered the applicant deported from the United States pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act) for having entered the United States without inspection. Consequently, on March 14, 1984, the applicant was removed from the United States. The record reflects that the applicant reentered the United States on June 11, 1989, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). On June 13, 1989, the applicant was served with an OSC and on June 16, 1989, an immigration judge ordered the applicant deported pursuant to section 241(a)(2) of the Act. On June 20, 1989, the applicant was removed from the United States. The record further reflects that the applicant once again reentered the United States in April 1991 without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 of the Act. The applicant married a U.S. citizen on September 25, 1993, and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 to reside with his U.S. citizen spouse and children.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *See Director's Decision* dated February 28, 2000. The decision was affirmed by the AAO on appeal. *See AAO Decision*, dated October 3, 2000. The applicant filed a motion to reconsider on November 8, 2000. After review of the case, the AAO dismissed the motion to reconsider and affirmed the prior AAO decision. *See AAO Decision*, dated August 21, 2001.

In the present MTR, counsel submits documentation from the Social Security Administration (SSA) regarding the applicant's child. The documentation submitted reveals that the applicant's child is disabled and eligible to receive Supplemental Security Income payments under the provision of Title XVI of the Social Security Act. In addition, counsel states that the applicant was not in deportation proceedings when he married his U.S. citizen spouse. Additionally, counsel adds that the applicant has no criminal record, has never worked without authorization, is married to a U.S. citizen and the father of three U.S. citizen children, and one of his children has been declared disabled by the SSA. Furthermore, counsel states that the applicant has been granted employment authorization cards since 1995 and has a Form I-130 approved on his behalf.

The AAO notes that in the MTR counsel states that the applicant's child has been diagnosed as being mentally retarded. However, in a list submitted by counsel regarding favorable factors for the applicant he states that the applicant's child has been diagnosed with multiple sclerosis. The fact remains that the applicant's child has been declared disabled by the SSA and requires continuous medical attention and the applicant's constant attentiveness.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his U.S. citizen spouse and children, an approved Form I-130, the fact that he has worked with authorization since 1995, the absence of any criminal record, the prospect of general hardship to his family and the serious medical condition of his U.S. citizen child.

The unfavorable factors in this case include the applicant's initial illegal entry, his illegal reentries subsequent to deportations, and periods of unauthorized presence in the United States

While the applicant's actions are very serious matters that cannot be condoned, the AAO finds that given all of the circumstances of the present case, the applicant has established that the favorable factors outweigh the adverse factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the motion to reopen will be granted, the prior AAO decision dismissing the appeal will be withdrawn and the application approved.

ORDER: The motion to reopen is granted, the prior AAO decision is withdrawn and the application approved.