



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW DELHI, INDIA Date: FEB 04 2008

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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 after removal was denied by the Officer in Charge, New Delhi, India. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 37-year-old native and citizen of Nepal who was found inadmissible to the United States. The record reflects that the applicant is the spouse of a U.S. citizen, and the beneficiary of an approved relative petition filed on his behalf by his spouse. The applicant was removed from the United States in 2004. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii).¹ 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 travel to the United States and reside with his U.S. citizen spouse.

The officer in charge determined that the applicant was inadmissible to the United States and that the unfavorable factors in the applicant's case outweighed the favorable factors. The officer in charge accordingly denied the applicant's application for permission to reapply for admission after removal. *See Decision of the Officer in Charge.*

On appeal, the applicant contends that the officer in charge failed to address the merits of his case and erred in denying his application in the exercise of discretion. *See Applicant's Statement on Form I-290B, Notice of Appeal to the AAO.*

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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

¹ The applicant is also inadmissible to the United States under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i). His Form I-600, Application for Waiver of Ground of Excludability, was denied by the Officer in Charge. The applicant's appeal of the denial was dismissed by the AAO.

United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' 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.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The officer in charge determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and (a)(9)(B)(i). The officer in charge further found that the applicant failed to establish extreme hardship to his U.S. citizen spouse, and denied his waiver application accordingly. In so doing, the officer in charge also found that the application should be denied in the exercise of discretion. The applicant's appeal of the denial of his Form I-601, Application for Waiver of Grounds of Excludability, was dismissed by the AAO.

Having found the applicant to be inadmissible to the United States, and ineligible for a waiver of inadmissibility, the Form I-212 was properly denied by the officer in charge. The AAO therefore affirms the decision of the officer in charge.

The AAO further notes, and agrees with, the discretionary analysis in the decision of the officer in charge. 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.

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.*

The favorable factors in this matter are the applicant's family tie to a U.S. citizen, his spouse, and the approval of a petition for alien relative. The unfavorable factors include the applicant's inadmissibility, as well as his attempts to circumvent the immigration laws by fraud and misrepresentation. 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 that he is eligible 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.