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



U.S. Citizenship  
and Immigration  
Services

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H4

[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JAN 30 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:

[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 after removal was denied by the Director, California 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 Philippines who initially entered the United States on November 17, 1989, using a passport and visa in someone else's name. On June 8, 1992, the applicant filed a Request for Asylum in the United States (Form I-589). On December 28, 1993, the Service denied the applicant's Form I-589, and referred her case to an immigration judge. On September 16, 1994, an Order to Show Cause (OSC) was issued against the applicant. On June 5, 1995, the applicant's father filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On August 24, 1995, the Form I-130 was approved. On November 22, 1995, the applicant's daughter, [REDACTED], was born in California. On October 19, 1998, an immigration judge granted the applicant voluntary departure. On November 16, 1998, the applicant filed an appeal with the Board of Immigration Appeals (BIA). On February 18, 2000, the applicant's daughter, [REDACTED] was born in California. On July 31, 2002, the BIA affirmed the immigration judge's decision. The applicant failed to depart the United States as ordered. On August 31, 2002, a Warrant of Removal/Deportation (Form I-205) was issued. On July 31, 2003, the applicant filed a motion to reopen the BIA's decision, which the BIA denied on September 24, 2003. On October 10, 2003, the applicant was removed from the United States. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I). She 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 reside with her lawful permanent resident father and two United States citizen children.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for being ordered removed under section 240 or any other provision of law and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated September 15, 2006.

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 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 aliens' reembarkation at a place outside the 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.

On appeal, the applicant, through counsel, contends that the Director "abused his discretion [sic] in denying the applicant's I-212 Application for Permission to Reenter the US when he did not, [sic] take into account the condition of applicant's US citizen father who is seriously ill, and is awaiting reunification with his daughter whom he petitioned." *Form I-290B*, filed October 12, 2006. [REDACTED] states the applicant's father underwent surgical repair of a retinal detachment in his left eye on April 27, 2006. *See letter from [REDACTED], M.D.*, dated October 10, 2006. Additionally, [REDACTED] states the applicant's father recently had prostate surgery, and "[d]uring the next two to three months [the applicant's father] will require assistance from the functional standpoint because [the applicant's father] currently lives alone." *Letter from [REDACTED], M.D.*, dated October 19, 2006. [REDACTED] claims that "[i]t is [his] understanding that one of the daughters in the Philippines is interested in coming to take over [the applicant's father's] care since his other family members are committed to an extensive degree in other endeavors. The [applicant's father] will need assistance for everyday functional affairs as well for his medical care follow-up." *Id.* The AAO notes that the applicant's father's poor health is a hardship; however, there is no evidence demonstrating that the applicant provided any assistance to her father when she resided in the United States. Further, the applicant has four siblings who reside in the United States and it has not been established that they could not help care for their father. Counsel claims that the applicant's "family members would experience hardship if she were not permitted to reapply for admission into the U.S., especially considering that Applicant would be separated from her family, including her two U.S. citizen children." *Brief in Support of Appeal*, page 4, filed November 13, 2006. Counsel states that the "[a]pplicant's absence from the U.S. will result in severe economic and financial hardship to Applicant and her children because Applicant would struggle to find employment and earn a decent living considering the poor economic and political conditions in the Philippines." *Id.* at 9. The AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will

consider the hardship to the applicant's father and children, but it will be just one of the determining factors. Counsel states that the "[a]pplicant's thirteen-year- [sic] long residence in the U.S. should be weighed more favorably because during that time, Applicant not only gained valuable job experience but she also became an integral part of her community and has provided a service to the U.S. by providing her labor in the U.S. work force." *Id.* at 8. The AAO notes that the applicant initially entered the United States by fraud and that the years of her unauthorized presence in the United States is an unfavorable factor. Additionally, there were periods of time when the applicant was employed without authorization and this is another unfavorable factor.

The record of proceedings reveals that on November 17, 1989, the applicant entered the United States by presenting a passport and visa in someone else's name. On October 19, 1998, an immigration judge granted the applicant voluntary departure. On July 31, 2002, the BIA affirmed the immigration judge's decision. The applicant failed to depart the United States as ordered. On October 10, 2003, the applicant was removed from the United States. Based on the applicant's previous order of removal, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) 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:

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 ties to a lawful permanent resident and United States citizens, her father and children, general hardship they may experience, no criminal record, and the approval of a petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry into the United States by fraud and periods of unauthorized presence and employment.

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 she 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.