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U.S. Citizenship  
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Services

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H4

FILE:

Office: NEWARK, NJ

Date: JAN 30 2008

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) 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 District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who married [REDACTED] a lawful permanent resident of the United States, on May 23, 1992, in Guatemala. On May 4, 1994, the applicant entered the United States without inspection. On the same day, an Order to Show Cause (OSC) was issued against the applicant. On September 19, 1994, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On September 27, 1994, the applicant filed a Request for Asylum in the United States (Form I-589). On May 8, 1995, the applicant withdrew her Form I-589. On the same day, an immigration judge granted the applicant voluntary departure. On October 18, 1995, the applicant's Form I-130 was approved. The applicant failed to depart the United States as ordered. On May 9, 1996, a Warrant of Removal/Deportation (Form I-205) was issued. On October 1, 1996, the applicant's daughter, [REDACTED] was born in New Jersey. On February 16, 2001, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601) and an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On September 7, 2001, the applicant's daughter, [REDACTED] was born in New Jersey. 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 spouse and two United States citizen children.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Form I-212 accordingly. *Director's Decision*, dated August 10, 2002.

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 "improperly denied [the Form I-212]...[The Director] wrongly found that no extreme hardship would inure to the applicant's United States citizen children in the event that she were to depart from the country. [The Director] also placed too much weight on a prior withdrawal of an asylum application." *Form I-290B*, filed September 12, 2002. The AAO notes the neither the applicant nor her husband submitted a statement regarding the hardship they would suffer if the applicant were removed to Guatemala. Additionally, there is no evidence that the applicant provides any assistance in raising the children or contributes financially to the household. 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.

The record of proceedings reveals that on May 4, 1994, the applicant entered the United States without inspection. On May 8, 1995, an immigration judge granted the applicant voluntary departure. The applicant failed to depart the United States as ordered. On May 9, 1996, a Warrant of Removal/Deportation was issued. 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 husband 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 without inspection, her failure to abide by an order of deportation, and periods of unauthorized presence.

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.