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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUN 10 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 Acting Center 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 Colombia who initially entered the United States on March 11, 2000, on a B-2 nonimmigrant visa, with authorization to remain in the United States until September 10, 2000. On February 14, 2001, the applicant married [REDACTED], a national and citizen of Colombia, in New Jersey. On November 13, 2001, a Notice to Appear (NTA) was issued against the applicant. On March 2, 2002, a Petition for Alien Relative (Form I-130), filed on behalf of the applicant's husband by his sister, was approved. The applicant filed an Application for Asylum and/or Withholding of Removal (Form I-589), and on August 16, 2002, an immigration judge denied the applicant asylum but granted the applicant voluntary departure until October 15, 2002. The applicant failed to depart the United States. On October 12, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On August 18, 2005, the Director denied the applicant's Form I-485 because the applicant's husband's Form I-485 was denied or withdrawn. 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 adult sons.

The Acting Center Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), 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 Acting Center Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Acting Center Director's Decision*, dated December 13, 2005.

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 Acting Center Director "did not adequately consider the favorable factors in consideration of the seeking of permission to re-apply to the United States." *Form I-290B*, filed January 9, 2006. [REDACTED] states that since the applicant's husband's death on May 23, 2005, the applicant and her sons have been dealing with the mourning process. *See psychological evaluation by [REDACTED] M.S.W., Psy.D*, dated March 8, 2006. The AAO notes that [REDACTED] states that the applicant and her son "appeared to be psychologically healthy individuals...[He] was unable to elicit any evidence of symptoms of any mental disorder." *Id.* Additionally, 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 sons, but it will be just one of the determining factors. [REDACTED] states that the applicant was working as a "housekeeper or babysitter. However, she left her paid employment to care for husband during his illness; she has not worked since his death." *Id.* The AAO notes that part of the time that the applicant was employed in the United States was without authorization and that is an unfavorable factor.

The record of proceeding reveals that on August 16, 2002, an immigration judge granted the applicant voluntary departure. The applicant failed to depart the United States as ordered. 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 lawful permanent residents, her sons, and general hardship they may experience.

The AAO finds that the unfavorable factors in this case include the applicant's failure to abide by the terms of her initial admission into the United States, her failure to comply with an order of removal, and periods of unauthorized 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.