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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: MINNEAPOLIS, MINNESOTA

Date: **JUN 13 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Acting Executive Director, Customs and Border Protection, Minneapolis, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant is a native and citizen of Canada who attempted to enter the United States on July 16, 2004. After immigration officers questioned the applicant regarding the purpose of his visit to the United States, the officers determined that the applicant was attempting entry into the United States to commence in unauthorized employment. On July 16, 2004, the applicant was expeditiously removed from the United States. The applicant is inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). 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 visit the United States.

The acting director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for being ordered removed under section 235(b)(1) and who again seeks admission within 5 years of the date of such removal. The acting director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Acting Executive Director's Decision*, dated February 1, 2006.

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

(A) Certain alien previously removed.-

(i) Arriving Aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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.

(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 states that he "feel[s] that [his] case was not fairly considered." *Form I-290B*, filed March 6, 2006. The applicant claims that he has "spent many hours doing volunteer work in [his] community...and with a group of young persons in Guatemala after a hurricane." *Brief in Support of Appeal*, dated February 22, 2006. He is "presently continuing [his] studies at the University of Winnipeg...[he does] not use illegal drugs, not associate with any gangs or criminal organization[s]." *Id.* [REDACTED], the applicant's grandfather, states the applicant "has never been in conflict with the law, had no criminal record." *Letter from [REDACTED]s, Provincial Court Judge of Manitoba (Retired)*, dated July 26, 2000. The applicant states that "[t]he misrepresentation which [he] made at the time of [his] removal, surely does not outweigh all of these other indicators about [his] good character. The misrepresentation itself was hardly very devious as it concerned only the possibility of receiving a small sum of money, an amount which would not even cover the car trip expenses from Winnipeg to Michigan and return, let alone no allowance for food or lodging...It was never [his] intention to violate the law, but [he] did not consider taking part in a weekend folk festival for a modest sum amounted to 'working illegally' or taking on employment." *Brief in Support of Appeal, supra*. The applicant admits to knowing that "it was illegal to [try] to get a job in the US without the proper papers." *Letter from the applicant*, dated July 16, 2005. The AAO notes that working without authorization is a violation of United States immigration laws; however, the record does not establish that the applicant would definitely receive payment for his performance. The applicant states he has learned from his mistake, "and now fully appreciate[s] the situation. [He] can assure [us] that it will never happen again." *Brief in Support of Appeal, supra*. [REDACTED] states the applicant worked as "a staff member at Douglas Mennonite Church for July and August 2005, in the position of Church Leadership Intern...[and he] is a member in good standing of the Douglas Mennonite Church." *Letter from [REDACTED]e, Youth Minister*, dated July 15, 2006. [REDACTED] states the applicant is "one of [his] most valued employees...[The applicant] has demonstrated excellence not only in terms of productivity, but also in the equally important areas of attitude, quality performance and leadership...[The applicant] has also distinguished himself in terms of honest and integrity." *Letter from [REDACTED]*, dated July 22, 2005.

The record of proceedings reveals that on July 16, 2004, the applicant was expeditiously removed from the United States. Based on the applicant's previous order of deportation, the applicant is clearly inadmissible under section 212(a)(9)(A)(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 include the very strong letters of recommendations from the applicant's family and employers and his remorse for his actions.

The AAO finds that the unfavorable factor in this case is the applicant's initial attempt at entering the United States with the possibility of working without authorization.

While the applicant's actions cannot be condoned, the AAO finds that given all the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.