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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: EL PASO, TEXAS

Date:

SEP 10 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the District Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who initially entered the United States without inspection in February 1998. In October or November 1998, the applicant departed the United States. On November 23, 1998, the applicant attempted to enter the United States by presenting a counterfeit temporary I-551. On the same day, the applicant was expeditiously removed to Mexico. On an unknown date in November 1998, the applicant reentered the United States without inspection. In June or July 2002, the applicant departed the United States. The applicant is inadmissible to the United States under sections 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 reside with his wife.

The District 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 previously removed from the United States, and denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *District Director's Decision*, dated July 7, 2006. Additionally, the AAO notes that the District Director determined that the applicant was subject to the reinstatement; therefore, he was "not eligible for any relief under the Act and no purpose [would] be served by granting [the applicant's] application." *Id.*

Section 241(a) of the Act states in pertinent part:

(5) Reinstatement of removal orders against aliens illegally reentering. If the Attorney General [now, Secretary, Department of Homeland Security] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The regulation at 8 C.F.R. § 241.8 states that:

(b) *Notice.* If an officer determines that an alien is subject to removal under this section, he or she shall provide the alien with written notice of his or her determination. The officer shall advise the alien that he or she may make a written or oral statement contesting the determination. If the alien wishes to make such a statement, the officer shall allow the alien to do so and shall consider whether the alien's statement warrants reconsideration of the determination.

A review of the record indicates that the applicant in the present matter was not issued a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) as required by 8 C.F.R. § 241.8(b). Accordingly, the AAO finds that the applicant's prior removal order has not been reinstated and that he is not precluded from applying for relief by section 241(a)(5) of the Act.

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 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's wife states the applicant has "never committed any wrong other than being here illegally." *Letter from* [REDACTED] undated. The AAO notes that the applicant resided in the United States without authorization and that is an unfavorable factor. Additionally, any period of time that the applicant was employed in the United States was without authorization and that is an unfavorable factor. The applicant's wife states she takes "anxiety and depression medicine, on Aug 8th 2006 [she had] to go in for a biopsy on [her] breast and all this [she has] to do it alone, it is very difficult and hard to be living this way considering [her] age, and being alone." *Id.* The AAO notes that in a July 11, 2006 medical report, the applicant's wife stated that the medication "she started at her last visit for her anxiety has done very well, and she has not had any single episode of anxiety attack since she started it, and she states that her mood is actually much improved." *Medical Report, St. Joseph Hospital – Denver, CO, dated July 11, 2006.* Regarding the hardship the applicant's wife may face, 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 wife, but it will be just one of the determining factors.

The record of proceedings reveals that on November 23, 1998, the applicant was expeditiously removed from the United States. On an unknown date, the applicant reentered the United States without inspection. In June or July 2002, the applicant departed the United States. Based on the applicant's previous removal, 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 are the applicant's family ties to his wife, general hardship she may experience, and no criminal record apart from his immigration violations.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his illegal reentry into the United States subsequent to his November 23, 1998 removal, and his 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 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.