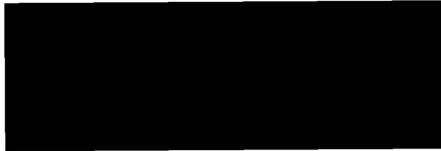


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FILE: [REDACTED] Office: SEATTLE, WASHINGTON Date: **SEP 17 2008**

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 Director, Field Operations, Customs and Border Protection, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who applied for admission into the United States on December 29, 2006. 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 unauthorized residence and employment. The applicant was expeditiously removed from the United States on December 30, 2006. The applicant is inadmissible to the United States under section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A). 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 continue his employment.

On or about July 19, 2007, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On October 5, 2007, the Acting Director determined the applicant was inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), for having been removed under section 235(b)(1), and denied the applicant's Form I-212. *Acting Director's Decision*, dated October 5, 2007.

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 five to ten 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.

Counsel states that the applicant's "absence from the United States will result in extreme hardship to a U.S. company, Durable Crushers, Inc., and its U.S. employees. [The applicant] is the only person with the expertise and knowledge to complete the field testing of Durable Crushers, Inc.'s primary product Duracone, a high output portable rock crusher." *Appeal Brief*, page 2, filed November 19, 2007. [REDACTED] states his company, Durable Crushers, Inc., needs the applicant's "technical expertise which is in critical short supply in the United States.... [The applicant] qualifies under the NAFTA regulations for a TN visa as a technical assistant." *Letter from [REDACTED] Durable Crushers, Inc.*, dated July 17, 2007. Counsel states the applicant "is very remorseful of his past mistake." *Appeal Brief*, supra at 8. The AAO notes that the applicant stated that he knew he needed work authorization to work in the United States and he was aware that he was working illegally in the United States. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated December 30, 2006. Additionally, the applicant admitted that he willfully misrepresented his intentions for entering the United States. *Id.*

The record of proceedings reveals that on December 30, 2006, the applicant was expeditiously removed from the United States. Based on the applicant's expedited 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 factor in this matter is the applicant's lack of a criminal record in the United States, other than his immigration violations.

The AAO finds that the unfavorable factors in this case include the applicant's attempt at entering the United States by misrepresenting his intentions in the United States, 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 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.