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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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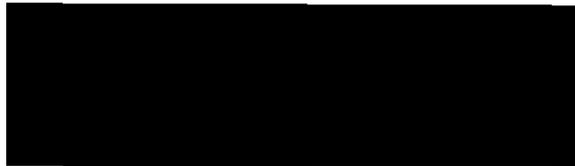
Date: FEB 22 2012 Office: ROME, ITALY

FILE: 

IN RE: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Nigeria who entered the United States in 1985. On February 26, 2000, the applicant was deported from the United States pursuant to section 237(a)(2)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1251(a)(2)(A)(ii), as an alien who after entry had been convicted of two crimes involving moral turpitude. The current record does not indicate that the applicant has reentered the United States. 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 travel to the United States and reside with his U.S. citizen spouse and child.

In a decision, dated February 3, 2009, the field office director determined that the applicant was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of crimes involving moral turpitude and under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year. The field office director then found that the unfavorable factors in the applicant's case outweighed the favorable factors and the applicant's Form I-601 waiver application had been denied. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly.

In a Notice of Appeal to the AAO, (Form I-290B), dated March 3, 2009, the applicant states that he now has a U.S. citizen child, born in 2009, and that the child has medical problems.

The record indicates that the applicant, born on December 25, 1975, entered the United States in 1985 at the age of ten years old. On August 1, 1993, at the age of 17 years old, the applicant filed a fraudulent Application for Asylum or Withholding of Removal (Form I-589) using the name [REDACTED]. This application was administratively closed on April 22, 1997 after the applicant failed to appear for the asylum interview. The AAO notes that on the applicant's Record of Deportable Alien (Form I-213), dated March 4, 1999, the applicant states that he fraudulently completed the asylum application so that he could obtain employment authorization and continue to live and work in the United States.

The record also indicates that on May 6, 1997 the applicant pled guilty to attempted grand theft under Cal. Penal Code § 664/487(a) and was sentenced to 120 days in jail and three years of probation. On December 3, 1998, the applicant pled guilty to conspiracy to commit extortion under Cal. Penal Code §§ 182(a)(1) and 520, and was sentenced to 525 days in jail and five years of probation.

On March 4, 1999, the applicant was served with a Notice to Appear before an Immigration Judge in San Diego, California. On April 7, 1999 the applicant filed an application for adjustment of status (Form I-485). On May 7, 1999, an immigration judge found the applicant removable as an alien who was convicted of an aggravated felony for having been convicted of a crime of violence and a theft crime for which imprisonment is at least one year. On September 2, 1999, an immigration judge denied his Form I-485 and ordered the applicant removed pursuant to section 237(a)(2)(A)(ii) of the Act, as an alien who after entry had been convicted of two crimes involving moral turpitude. The judge noted that the applicant having been convicted of an aggravated felony was irrelevant because the applicant was

not a lawful permanent resident. The AAO notes that the immigration judge did not find that the applicant filed a frivolous asylum application. On February 26, 2000 the applicant departed the United States.

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.

The AAO finds that as the applicant was convicted of an aggravated felony, he must apply for permission to reapply for admission under 212(a)(9)(A)(iii) 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.*

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

[T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

The adverse factors in the present case are the applicant's convictions for attempted grand theft and conspiracy to commit extortion as well as his submitting a fraudulent asylum claim to gain an immigration benefit. The AAO notes that the applicant's case includes mitigating circumstances in regards to these factors, namely the applicant's age at the time these acts were committed. The applicant was 17 years old when he submitted the fraudulent asylum application and was 22 and 23 years old at the time he committed the criminal offenses which led to his convictions. The AAO also notes that the applicant has now been living in Nigeria, a country he first left when he was only ten years old, for over ten years.

The favorable factors in the present case are the applicant's family ties to the United States; hardship to the applicant's family if he were to be denied a waiver of inadmissibility; and the applicant's lack of a criminal record or offense since 1998. In addition, the record includes twelve letters from family and friends attesting to the strength of the applicant's marriage and the applicant's good moral character. The record also includes a letter from the applicant's father-in-law's company stating that the applicant will have a position with the company upon his return to the United States and a letter from the applicant. In his letter, the applicant apologizes for the moral offenses he committed. He states that he is ashamed and remorseful of his actions. He also states that in the years he has been outside the United States he has grown up, become much wiser, more mature, and more humble. Finally, he states that at this time in his life his only desire is to work hard, take care of his family, and prove to his wife that their life can be good again.

The applicant's actions in this matter cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.