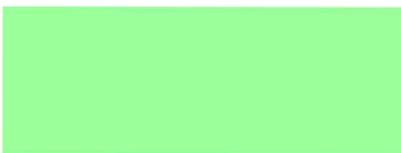


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS2090
Washington, DC 20529-2090

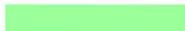


U.S. Citizenship
and Immigration
Services

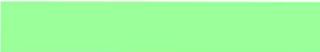


Date: **APR 17 2013**

Office: MEXICO CITY

FILE: 

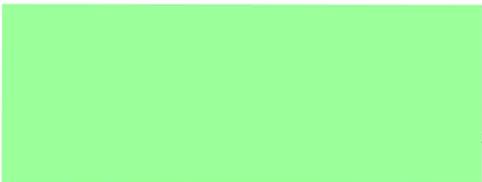
IN RE:

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:



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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who entered the United States without inspection or authorization in 1989, when he was eight years of age. On June 10, 2010, the applicant was removed from the United States to Mexico. The current record does not establish that the applicant has reentered the United States. The record indicates the applicant has been taking care of his son in Mexico and that the applicant maintains his residence in the city of Pachuca, in Hidalgo, Mexico. The applicant now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (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 wife and children. The record reflects that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued unlawful presence in the United States in excess of one year.

In a decision dated June 6, 2011, the field office director determined that the applicant was inadmissible pursuant to section 212(a)(9)(B) of the Act for having been unlawfully present in the United States for more than one year. The field office director then found that advance approval of the applicant's Form I-212 would not cure inadmissibility under section 212(a)(9)(B) and that the Form I-212 may not be granted when additional grounds of inadmissibility exist. The field office director noted that the applicant's waiver application, Form I-601, had been denied and that the applicant therefore continued to be subject to the grounds of inadmissibility. Consequently, the field office director denied the Form I-212 because the applicant remained subject to the additional grounds of inadmissibility. Evidence in the record indicates that the applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, and that the waiver application was approved by the AAO.

On appeal, counsel asserts that the applicant's equities demonstrate that refusing his admission to the United States has resulted, and will continue to result, in extreme hardship to his U.S. citizen wife and in general hardship to the applicant's son. Counsel states that the applicant has spent substantial time outside the United States and is a rehabilitated man and productive member of society. Counsel requests that the waiver application be approved "as its denial was an abuse of discretion."

In support of the Form I-212 application, the record includes, but is not limited to: the applicant's statement; statement from the applicant's family and friends, including his U.S. citizen wife; employment reference letters; and the applicant's conviction records.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

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 record reflects that the applicant entered the United States without inspection in August 1989, and remained in the United States until his removal to Mexico on June 10, 2010. The applicant was placed in removal proceedings in April 1998, and was ordered removed in May 1999. The applicant appealed that decision and the Board of Immigration Appeals (Board) dismissed the appeal on August 15, 2003. The applicant then filed a petition for review of the Board's decision with the Fifth Circuit Court of Appeals, which was dismissed on June 15, 2005. The applicant remained in the United States until his removal on June 10, 2010. The applicant's period of unlawful presence in the United States began accruing on his April 12, 1999, the date of his eighteenth birthday, and continued until his removal in June 2010. The applicant filed Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, on March 17, 2011.

The AAO finds that as the applicant was removed from the United States, 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. *Id.* 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 this case are the applicant's convictions and arrests; the applicant's unlawful presence in the United States; any period of unauthorized employment; and the applicant's disregard of a removal order which became final in 2005.

The favorable factors in this case are the applicant's family ties to the United States; the applicant's 20 year residence in the United States; the extreme hardship to the applicant's wife if he were denied a waiver of inadmissibility; the applicant's employment history; general hardship to the applicant's children if he were denied admission into the United States; and the evidence demonstrating remorse for his crimes and rehabilitation.

In support, the applicant submits on appeal additional evidence of positive equities in his case. The applicant submits a declaration in which he expresses remorse for his actions, and in which he states that he has made mistakes in his life. In a declaration dated July 2, 2011, the applicant admitted his involvement in the crimes which resulted in his convictions. He expressed remorse for his participation, and apologized for the bad choices he made in the past. The applicant asserts that his marriage to his wife makes him want to be a better person, and that he is focused on working to support and maintain his family. The applicant states that thanks to his wife, he began attending church and now lives his life according to its precepts. The applicant also asserts that he has continued to attend church after his removal to Mexico, and a letter from the [REDACTED] in Mexico corroborates this assertion.

As evidence of rehabilitation, the applicant included a certificate of successful completion of an Intensive Substance Abuse Program. In a letter dated November 9, 2011, [REDACTED] a clinic director and the [REDACTED] stated that the applicant developed into a group leader while attending the outpatient program. According to [REDACTED] Wallace, the applicant is not chemically dependent and does not suffer from the disease of addiction. [REDACTED] further stated that the applicant took the program seriously, attended and participated in all meetings and successfully completed the treatment program. [REDACTED] believes that the applicant learned from past mistakes and "moved forward in a positive direction." [REDACTED] further indicates that the applicant was recognized for his efforts as the recipient of the program's "Most Improved Person in Recovery" award for the year 2008. The declarations from the applicant's wife and family members further corroborate the assertions [REDACTED] made about the applicant.

Additionally, the record reflects that the applicant has been a member of the [REDACTED] in Mexico since his removal to that country in 2010. In a letter dated June 29, 2011, church leader

asserted that the applicant attends church regularly, that he has taken his son and wife with him to church services, that he has a good attitude, and is reliable and hard-working. The record further includes a letter dated June 29, 2011, from [REDACTED], of the [REDACTED] in Louisiana, in which he states that the applicant became an active member of the church in January 2010. The applicant and his family sought counseling at the church through the "Cell Groups and Leadership Program," and that the applicant "was turning his life around, searching for spiritual growth and happiness with his family," which supports counsel's assertions regarding the applicant's responsibilities towards his family. Moreover, the applicant has a history of stable employment as a waiter and manager of "[REDACTED]" His history of employment is supported by an employment reference letter submitted by the applicant with his waiver application. These are favorable indicators of efforts at rehabilitation which, when evaluated in the aggregate, demonstrate that the applicant has rehabilitated.

The AAO has weighed the severity of the applicant's criminal convictions, his efforts towards rehabilitation, his 20 years of residence in the United States, and the other favorable facts in the record, including the extreme hardship to his U.S. citizen wife, his three children and family ties, and his history employment, and finds that the applicant merits a favorable exercise of discretion. The AAO recognizes that it is favorably exercising discretion in a case presenting criminal conduct and immigration violations.

However, the AAO finds that the record evidence indicates that the applicant is sincere in his remorse for his crimes and has rehabilitated. The AAO acknowledges significant positive factors that were not present at the time of the applicant's convictions. For instance, the applicant is now an active member of his church and community. He is married to a U.S. citizen and they have a U.S. citizen son together. Also, the evidence in the record indicates that his marriage has served as a significant stabilizing factor, and the absence of arrests and convictions since he met his wife support this assertion. Additionally, the applicant's wife is experiencing extreme hardship as a result of his inadmissibility, and his son is experiencing health difficulties as a result of relocation to Mexico. Furthermore, the evidence in the record indicates that the applicant has long residence in the United States, and that his wife and son depend on him financially and emotionally. Given these factors, coupled with the hardship that would be experienced by his U.S. citizen wife and children upon his denial of admission, we find that the positive factors outweigh the negative factors in this case.

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 and the application approved.

ORDER: The appeal is sustained.