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



U.S. Citizenship  
and Immigration  
Services

Date: APR 18 2013

Office: TEGUCIGALPA

FILE: [REDACTED]

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)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Nicaragua who entered the United States without inspection or authorization in March 1998, when he was 19 years of age. On October 7, 2009, the applicant was removed from the United States to Nicaragua. 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 family in Nicaragua and that the applicant maintains his residence in the city of Tipitapa, in Managua, Nicaragua. 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 December 19, 2011, the field office director determined that the applicant was inadmissible pursuant to 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 advance approval of the applicant's Form I-212 would not cure inadmissibility under section 212(a)(9)(B)(i)(II) 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 has been 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 children. Counsel states that the applicant has spent substantial time in the United States, and that he is now a rehabilitated man who wants to take care of his family. Counsel requests that the waiver application be approved as the favorable factors of the applicant's case outweigh the negative ones.

In support of the Form I-212 application, the record includes, but is not limited to: a police clearance letter; a statement by the applicant's Church Pastor; statements from the applicant's family members, including his U.S. citizen wife; and documentation concerning the applicant's criminal history in the United States.

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 March 1998, and was placed in removal proceedings in 2008. The applicant was granted voluntary departure on April 7, 2009. However, he remained in the United States until his removal on October 7, 2009. The applicant accrued unlawful presence in the United States in excess of one year. The applicant filed Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, on October 18, 2010.

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.*

In *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), it was 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 criminal convictions related to his driving record; the applicant's unlawful presence in the United States; and any period of unauthorized employment while in the United States.

The favorable factors in this case are the applicant's family ties to the United States; the applicant's 11-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 rehabilitation.

In support, the applicant submits on appeal additional evidence of positive equities in his case. The applicant's wife submits a declaration stating the applicant is a good father and that he is a hard-working person. Further, the record reflects that the applicant has been a member of the [REDACTED] in Nicaragua since his removal to that country in 2009. In an undated letter submitted on appeal, church [REDACTED] asserted that the applicant is a member of the congregation and that he is a person who wishes to improve his situation and succeed in life. Church [REDACTED] further indicates that the applicant now possesses a positive attitude towards life and has the courage to improve his quality of life. Additionally, the applicant submitted on appeal a police clearance letter from the National Police of the Republic of Nicaragua, indicating that a search of the relevant records revealed the applicant has no criminal record in that country. As such, the applicant has not been arrested or cited for traffic infractions or vehicular violations since his removal to Nicaragua in October 2009. This fact is significant, especially when considering that the applicant is employed in that country as a driver and that his three criminal convictions in the United States involved driving a vehicle while intoxicated and driving while license invalid. Consequently, the absence of any arrests or conviction since his return to Nicaragua constitutes a favorable indicator of the applicant's efforts at rehabilitation which, when evaluated in the aggregate, demonstrate that the applicant has rehabilitated.

Here, the AAO has weighed the severity of the applicant's criminal convictions, his efforts towards rehabilitation; his 11 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, general hardship to his three U.S. citizen children and the applicant's family ties and employment history; 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 has rehabilitated. The absence of arrests and convictions related to his driving record since his removal to Nicaragua supports this assertion given the applicant's employment as a driver in that country. The AAO also 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. Also, the applicant's wife is experiencing extreme hardship as a result of his inadmissibility, and his children are experiencing behavioral difficulties as a result of relocation to Nicaragua and the prospect of separation from the applicant. Furthermore, the evidence in the record indicates that the applicant has long residence in the United States, and that his wife and children depend on him financially and emotionally. Given these factors, 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.

**ORDER:** The appeal is sustained.