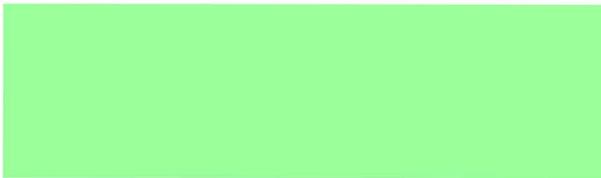


(b)(6)

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

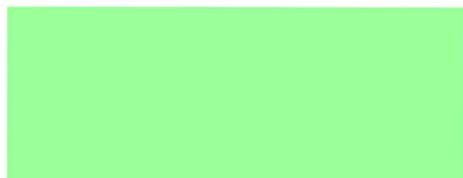


Date: **FEB 27 2013** Office: SAN ANTONIO, TEXAS FILE:

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)(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 its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, 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 any 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 Deportation or Removal (Form I-212) was denied by the Field Office Director, San Antonio, 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 El Salvador who was found inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), after being removed from 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 reside in the United States with his U.S. citizen father.

The Field Office Director determined that the applicant is inadmissible to the United States, the unfavorable factors outweigh the favorable factors, and he denied the applicant's Form I-212 accordingly. *Decision of the Field Office Director*, dated March 26, 2012.

On appeal, the applicant, through counsel, asserts that the Field Office Director failed to consider the "significant weight" of the favorable factors in comparison to the "limited" unfavorable factors. *Form I-290B, Notice of Appeal or Motion*, filed April 13, 2012.

The record includes, but is not limited to, counsel's appeal brief, a Certificate of Naturalization for the applicant's father, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(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 [Secretary] has consented to the aliens' reapplying for admission.

The record of proceeding reveals that on December 9, 2005, the applicant entered the United States without inspection. On May 2, 2006, an immigration judge ordered the applicant removed from the United States *in absentia*. After several motions to reopen and reconsider and his appeal to the Board of Immigration Appeals (Board) were dismissed, on August 27, 2007, the applicant was removed from the United States. As such, the applicant is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act for having been removed from the United States.

In his appeal brief filed April 3, 2012, counsel claims that the applicant has "strong family ties" to his U.S. citizen father and siblings residing in the United States. Documentation in the record shows that the applicant's father naturalized on January 9, 2013. Additionally, counsel states other favorable factors in the applicant's case include the absence of a criminal record and compliance with a removal order, while the only unfavorable factor is the applicant's entry without inspection.

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 favorable factors in this matter are the applicant's family ties to his U.S. citizen father, his lack of a criminal record, his five and half years outside of the United States, and the approval of a petition for refugee/asylee relative filed on his behalf.

The AAO finds that the applicant's entry into the United States without inspection, his failure to appear at his removal hearing, his unlawful presence, and his removal from the United States are unfavorable factors. The AAO finds that the applicant has not established by supporting evidence that the favorable factors in his case 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 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.