

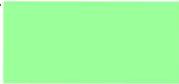


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DATE: **FEB 27 2013**

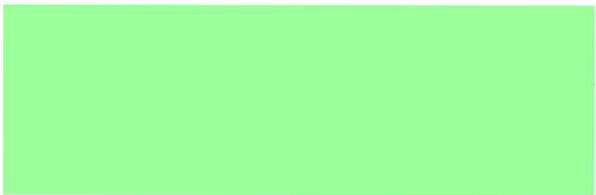
Office: DALLAS

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)(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.

Thank you,



 Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Dallas Field Office Director denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States without inspection in 1989 and then departed under an outstanding order of deportation on April 26, 1999. She reentered the United States pursuant to a grant of parole on January 15, 2000. She is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 her lawful permanent resident spouse and U.S. citizen children.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act and therefore was ineligible for permission to reapply for admission. The Field Office Director denied the application accordingly. *See Decision of Field Office Director*, dated April 23, 2012.

On appeal, counsel for the applicant contends that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act because she was paroled into the country and because she did not attempt to enter without inspection. *Counsel's Brief*.

The record contains, but is not limited to: statements from the applicant and her husband; letters of support from her family members, friends, employer, church, and her son's school; medical records relating to the applicant's husband and son; and financial records.

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

- (A) Certain aliens 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 alien 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 alien's 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 alien's reapplying for admission.

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible. . . .

The AAO finds that the Director erred in finding that the applicant is inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). The applicant entered the United States without inspection in 1989. She received a voluntary departure order in 1994, with instructions to leave the country by January 11, 1995. The applicant did not depart and the voluntary departure order became an order of deportation. The applicant departed the United States on April 26, 1999.¹ On January 15, 2000, she reentered the United States pursuant to a grant of public interest parole, valid until April 15, 2000. She has remained in the United States since that date.

Although the applicant departed the United States in 1999 under an order of deportation, she did not enter or attempt to reenter the United States without being admitted. Instead, she was inspected and paroled into the United States at a port of entry. Therefore, the applicant is not inadmissible under

¹ It appears that the applicant accrued unlawful presence from April 1, 1997 through her departure on April 26, 1999. She may need a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

section 212(a)(9)(C) of the Act. However, she remains inadmissible under section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

The record further reflects that the applicant and her lawful permanent resident husband have been married since 1971. They have four adult U.S. citizen children, one of whom lives with them, as well as several U.S. citizen grandchildren. Medical records indicate that the applicant's husband has been treated for knee problems and ongoing stomach illness, and that her youngest son has a back injury. The applicant's husband claims that he and his son need surgery and will need the applicant's assistance and support during their recoveries. The record also contains letters of support from several of the applicant's family members and friends, the pastor of her church, and her youngest son's high school counselor.

In *Matter of Tin*, 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:

[T]he basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitations, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

14 I&N Dec. 371, 373-74 (Reg. Comm. 1973).

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the United States. 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 in the country unlawfully. *Id.*

Matter of Lee further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. 17 I&N Dec. 275, 278 (Comm. 1978). *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. In such circumstances, there must be a measurable reformation of character over a period of time in order to properly assess an applicant's ability to integrate into our society. 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 case are the applicant's long residence in the United States, her long marriage to her lawful permanent resident husband, her four U.S. citizen children, her ties to extended family and friends in the United States, the health problems of her husband and son, and the support from her church and her son's school.

Although the 7th Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991) that less weight is given to equities acquired after a deportation order has been entered, and that the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, the AAO notes that the applicant married her lawful permanent resident spouse in 1971 in Mexico, prior to entering the United States, and therefore prior to the commencement of the applicant's deportation proceedings.

The unfavorable factor in this case is the fact that the applicant failed to depart voluntarily and later left the United States under an order of deportation.

The totality of the evidence demonstrates that the unfavorable factor in the present matter is outweighed by the favorable factors. The applicant's husband is a lawful permanent resident and her children are U.S. citizens. The record indicates that the applicant's family will suffer hardship if she is denied admission to the United States. There is no evidence that the applicant has any criminal record. The positive factors, including her length of residence, ties in the United States, lack of a criminal record, and hardship to her family members in the United States, outweigh the negative factor of her violation of a voluntary departure order in 1995 and subsequent deportation in 1999.

The applicant's violation of immigration law is serious and cannot be condoned. Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. In this case, the applicant has established that a favorable exercise of the Secretary's discretion is warranted, permitting the applicant to reapply for admission to the United States. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.