

(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: JUL 23 2013

Office: ROME, ITALY

FILE: [REDACTED]

IN RE: [REDACTED]

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:  
[REDACTED]

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, appearing to read "Ron Rosenberg", with a long, sweeping underline.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal (Form I-212) was denied by the Acting Field Office Director, Rome, Italy. The Administrative Appeals Office (AAO) dismissed the applicant's prior appeal without reaching the merits of his claims due to the dismissal of his Form I-601 appeal. As the appeal of the denial of the Form I-601 application has been reconsidered and the application has been approved, we will now reopen the applicant's appeal of the denial of his Form I-212 application *sua sponte* and approve the application.

The applicant is a native and a citizen of Cuba who was paroled into the United States on June 23, 1987. The applicant then applied for asylum, but withdrew his application and was ordered deported from the United States on March 13, 1997. On March 27, 2007, the applicant departed the United States, thereby self-executing his deportation order. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 parents and children.

In a decision dated August 2, 2011, the field office director found that there would be no purpose in granting the applicant's application for permission to reapply for admission as he was not eligible for a waiver of his inadmissibility under section 212(a)(9)(B) or section 212(h)(1)(A) of the Act. However, the acting field office director also found that the adverse factors in the applicant's case outweighed the positive factors and denied the application accordingly.

On appeal, counsel stated that the positive factors in the applicant's case outweighed the negative factors and that the appeal should have been considered pending the appeal of the applicant's waiver application.

We found, in a decision dated February 13, 2013, that as the applicant had been found inadmissible under section 212(a)(9)(B)(i) of the Act, and his appeal of the denial of his waiver application for this ground of inadmissibility was denied in a separate decision, no purpose would be served in adjudicating the applicant's Form I-212.

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 first entered the United States as a parolee on June 23, 1987 and then filed an Application for Asylum (Form I-589). On September 10, 1996, the applicant withdrew this application and was scheduled to appear in immigration court on March 13, 1997. The applicant failed to appear for his immigration hearing and was ordered deported. On September 16, 1998, the applicant filed for adjustment under the Nicaraguan Adjustment and Central American Relief Act (NACARA). On December 21, 2006, this application was denied and on September 25, 2006, the applicant's appeal was denied. The applicant departed the United States for Spain on March 27, 2007. Thus, the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act in order to reside in the United States with his U.S. citizen parents and children.

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 the applicant's case include the applicant's family ties to the United States, the hardship his U.S. citizen mother is facing as a result of separation; the lack of a criminal record since 1996; and the applicant's attributes as a loving and supportive son and father. The unfavorable factors in the applicant's case include his unlawful presence in the United States, his failure to appear at his removal hearing, and his criminal history.

Although the applicant's violations of immigration law and criminal record cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has now met that burden. Accordingly, the appeal will be reopened *sua sponte* and the application approved.

**ORDER:** The appeal is reopened *sua sponte* and the application is approved.