

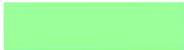


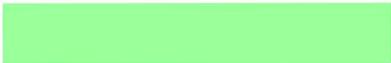
U.S. Citizenship
and Immigration
Services

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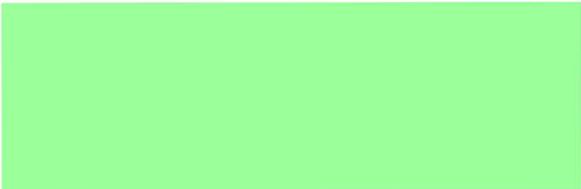


DATE: JUN 20 2013 Office: SAN SALVADOR (PANAMA CITY)

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) 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, appearing to read "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, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ecuador who entered the United States without inspection on or about December 15, 1999. On February 7, 2001, the applicant married a U.S. citizen and on July 30, 2001, his spouse filed a Petition for an Alien Relative (Form I-130) on his behalf. The Form I-130 was approved on June 12, 2003 and he then filed an Application for Adjustment of Status (Form I-485) on July 30, 2001. On December 3, 2001, the applicant was convicted under 18 U.S.C § 1028(a)(4) for possession of a false identification document and on December 21, 2001 the applicant was placed in removal proceedings. On March 29, 2005, an immigration judge granted the applicant voluntary departure, but his removal proceedings were later reopened. On October 4, 2007, an immigration judge denied the applicant's Form I-485 and a warrant of deportation was issued. On November 5, 2007, the applicant filed an appeal with the Board of Immigration Appeals (BIA), which was denied on July 18, 2008 and on October 2, 2009 the applicant self-executed his removal order by departing the United States. In applying for an immigrant visa the applicant was found to be inadmissible to the United States under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). The applicant is applying for permission to reapply for admission, in order to enter the United States where his U.S. citizen wife and child reside.

In a decision dated September 25, 2012, the field office director found that because the applicant was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act and section 212(a)(9)(B)(i)(II) of the Act and because he had failed to show that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility causing his waiver application to be denied, his application for permission to reapply for admission must also be denied as its approval would serve no purpose.

On appeal, counsel asserts that because the applicant's waiver application was erroneously denied his permission to reapply for admission was also erroneously denied.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 five 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 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.

As noted above, on October 2, 2009, the applicant was removed from the United States. As such, he is inadmissible under section 212(a)(9)(A) of the Act and must request permission to reapply for admission.

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.

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.*

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found, on a separate decision, that the applicant

warrants a favorable exercise of discretion related to the adjudication of his Form I-601. We now find that the applicant's Form I-212 should also be approved as a matter of discretion.

The favorable factors in the applicant's case include: the applicant's family ties to the United States, the hardship his wife, child, and grandparents would face if he were to be found inadmissible, the lack of a criminal record since 2001, the applicant's steady record of employment, his statements of regret for his actions, and, as evidenced by numerous letters in the record, the applicant's attributes as a supportive husband and trusted employee.

The unfavorable factors in the applicant's case include his illegal entry into the United States, his criminal conviction, his removal order, and his unlawful presence in the United States.

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.