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

(b)(6)

Date: SEP 1 2 2013 Office: SAN ANTONIO 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Antonio, Texas, denied the Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212), and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted, the prior AAO decision will be withdrawn, and the underlying appeal sustained.

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 is the beneficiary of an approved Refugee/Asylee Relative Petition (Form I-730). 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 and asylee mother.

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

On motion to reopen and reconsider, counsel for the applicant provides new evidence and asserts that, this evidence and the evidence previously submitted show that the favorable factors outweigh the negative factors, and thus warrant a favorable exercise of discretion.

In support of the motion, counsel submits a brief, updated statements of the applicant and of the applicant's petitioner, and a police clearance letter. The record includes, but is not limited to, counsel's appeal brief, a naturalization certificate, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the motion.

Section 212(a)(9)(A) provides, pertinent part:

> (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 … 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 who seeks admission within 10 years of the date of such alien's departure or removal … 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 contiguous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

According to the record, the applicant entered the United States without inspection or parole on December 9, 2005. 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. 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 and motion briefs, counsel claims that the applicant has strong family ties to this country in the form of a U.S. citizen father, asylee mother, and four siblings lawfully resident in the United States. Documentation shows that the applicant's father naturalized on January 9, 2013 and counsel represents that his mother and siblings are here as lawful permanent residents, or have asylee or temporary protected status as citizens of El Salvador. Counsel asserts that other favorable factors include an approved Form I-730, the absence of a criminal record, compliance with a removal order after exhaustion of appeals, and the fact that removal occurred nearly six years ago. Regarding negative factors, the record reflects that all the unfavorable factors stem from his entry without inspection: unexcused failure to appear, entry of in absentia removal order, departure pursuant to that removal order.

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.

We note that in *Matter of Tin,* the applicant had gained an equity (job experience) while unlawfully present that provided an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and that approval of his application for permission to reapply for admission would by condoning the applicant's acts encourage others to enter the United States to work unlawfully. *Id.* In the case before us, however, the applicant gained no such advantage from his unlawful U.S. entry. Further, in *Matter of Lee,* 17 I&N Dec. 275 (Comm. 1978), a record of immigration violations, standing alone, was held not to conclusively support a finding of a lack of good moral character.

There is evidence to support the applicant's claim that denial of permission to reapply for admission will impose hardship upon him and others. The record shows that, after fleeing civil war in El Salvador in 1989, the applicant's father obtained asylee status in the United States and recently became

a naturalized U.S. Citizen. The applicant's claims to being victimized and extorted by criminal gangs in his country and his father's claims to fear for his son's safety -- should he be unable to pay what is asked -- are substantiated by official U.S. government reporting. The U.S. Department of State (DOS) advises U.S. citizens that violent crime, including extortion and murder, are serious problems in El Salvador. *See Travel Warning—El Salvador,* January 23, 2013. Further, the U.S. Department of Homeland Security again extended temporary protected status for eligible citizens of El Salvador because of the security situation and infrastructure problems caused by a major earthquake in 2001. *See USCIS-- Temporary Protected Status Extended for Salvadorans,* May 30, 2013. Consequently, the evidence establishes that concern felt for the applicant by his elderly father, mother, and siblings represents a hardship to close relatives in the United States, as well as to the applicant himself.

The favorable factors in this matter are the applicant's U.S. citizen father, the presence here of the applicant's entire family, his lack of a criminal record, his almost six years outside of the United States, and the approval of a petition for refugee/asylee relative filed on his behalf. The negative factors are his illegal entry and related immigration violations resulting in his removal. The AAO therefore finds that the applicant has not established based on the record and by supporting evidence that the favorable factors in his case outweigh the unfavorable ones.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion is granted. The prior AAO decision is withdrawn and the underlying appeal is sustained.