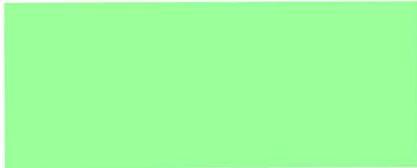




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **NOV 20 2014** Office: U.S. CUSTOMS AND BORDER PROTECTION
ADMISSIBILITY REVIEW OFFICE

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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission after Removal was denied by the Director, Admissibility Review Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of [REDACTED] and resident of the [REDACTED] who was found inadmissible under section 212(a)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A) for having been convicted of committing a crime involving moral turpitude. The applicant was subject to expedited removal under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) and is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 enter the United States for business and tourist activities and to accompany his spouse, who requires surgery and treatment for breast cancer.

The Director determined that the applicant attempted to deflect personal responsibility for his criminal behavior and that his stated reasons for wanting to enter the United States and the passage of time since his criminal activity do not outweigh adverse factors and denied the Form I-212 accordingly. *See Director's Decision*, dated April 28, 2014.

On appeal, counsel contends that the applicant's participation in community and humanitarian causes point to the strength of his moral character, that he has shown respect for law and order and provided evidence of reformation and rehabilitation, and that the passage of time should be considered from the date of his guilty plea in 2007 rather than the date of his conviction in 2011.

The record includes, but is not limited to, the following documentation: a brief filed by the applicant's attorney in support of Form I-290B, Notice of Appeal or Motion; documentation related the applicant's criminal conviction; a statement by the applicant explaining the circumstances leading to his arrest and conviction; a copy of the applicant's résumé; letters of reference; and evidence of the applicant's philanthropic endeavors. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states 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 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 who 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 contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that on September [REDACTED], the applicant was convicted in the United States District Court [REDACTED] of conspiracy to defraud the United States in violation of 18 U.S.C. § 371. The applicant was sentenced to 45 days imprisonment, a \$60,000,000 forfeiture order, a \$1,000,000 fine, and one-year supervised release. The applicant was then subject to expedited removal under section 235(b)(1) of the Act. The applicant is, therefore, 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.

The record further reflects that from 1999 to 2006, the applicant was the co-founder of a company created to provide online payment services for customers of internet gambling businesses, and he served as the company's chief executive officer from 1999 to 2002. The company was initially based in [REDACTED] and relocated to the [REDACTED] in 2004, and although the conduct of the company was in violation of U.S. law, that conduct was fully lawful in the jurisdictions in which the company was located. The applicant states that he left active management of the company in 2002, but continued to be affiliated with the company as a non-executive chairman and then as a non-executive board member. On October 13, 2006, the date the U.S. government passed the Unlawful Internet Gambling Enforcement Act (UIGEA), the applicant resigned his position as non-executive director of the company and stated that he severed all ties with the company after 2006. The applicant was arrested on January 15, 2007, and charged with violations of Title 18, U.S. Code Sections 1084, 1955, 1956(a)(2) and 1960, related to facilitating illegal internet gambling, conducting unlawful monetary transfers of illicit funds, and being party of a conspiracy to commit offenses against the United States. On June 29, 2007, the applicant pled guilty to violating Title 18 U.S. Code § 371, for conspiracy to defraud the United States. Subsequent to his plea, the applicant cooperated with U.S. authorities to assist the U.S. government with

enforcement efforts related to internet gambling. Due to this cooperation, the U.S. Attorney for the [REDACTED] moved for a sentencing reduction pursuant to Sentencing Guidelines § 5K1.1(a)(1). In sentencing the applicant on September [REDACTED], the judge imposed a sentence of 45 days imprisonment, stating that because of the applicant's cooperation with U.S. law enforcement, he gave a sentence substantially below the guidelines.

In addition, the applicant is involved in a charitable foundation in the [REDACTED] and states that he has donated over \$1.2 million to charitable causes since 2004, both personally and through his foundation. The applicant is further involved in community service in the [REDACTED], providing assistance to a soup kitchen that feeds the homeless, and a charity that provides assistance to impoverished elderly men and women. The applicant provided hurricane disaster relief during the hurricane in [REDACTED] in 2008. After a police officer in the [REDACTED] was shot, the applicant provided 30 Kevlar bulletproof vests for the [REDACTED].

Counsel states that the applicant's spouse was diagnosed with breast cancer in 2009, and has been receiving treatment in [REDACTED] Florida. Counsel states that the applicant has been very supportive of his wife, and together they have been fighting through the treatment of her cancer. The record includes a letter from the applicant's spouse's primary care physician in the [REDACTED] dated May 19, 2014, which states that she attended the [REDACTED] Florida in 2014 and began a series of reconstructive surgery. However, there is no evidence in the record from the [REDACTED] concerning her treatment and surgery and no statement from the applicant's spouse concerning her treatment and the applicant's role in her care. Without more detailed information for the applicant's spouse and her treating physicians, we are unable to reach conclusions concerning the severity of her current condition, the treatment that is needed, and the level of support and assistance required from the applicant.

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.

The favorable factors in this case include the applicant's attempt to distance himself from the company involved in internet gambling subsequent to the passage of UIGEA by the U.S. government, the applicant's cooperation with U.S. authorities in enforcement efforts related to internet gambling, which resulted in a reduced sentence at the time of his conviction, the applicant's charitable donations and community service, the applicant's care for his spouse, and letters of reference.

The unfavorable factors in this case are the applicant's conviction for conspiracy to defraud the United States, which is a crime involving moral turpitude and renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act and is also an aggravated felony, and the magnitude of the forfeiture order and fine imposed in the sentencing of the applicant. In addition, the applicant indicated that at the time he was affiliated with the company involved in internet gambling, he was made aware that there were existing laws in the United States that might be interpreted as making his business illegal for U.S. clients.

The totality of the evidence demonstrates that the favorable factors in the present matter are outweighed by the unfavorable factors.

We note that the applicant also requires Advance Permission to Enter as Non-immigrant (Form I-192) to overcome his inadmissibility under section 212(a)(2)(A) of the Act for having been convicted of a crime involving moral turpitude. In a separate decision, the applicant's Form I-192 was denied, and the denial is currently on appeal before the Board of Immigration Appeals.

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.