



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-J-G-

DATE: DEC. 16, 2015

APPEAL OF LOS ANGELES FIELD OFFICE DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR
ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR
REMOVAL

The Applicant, a native and citizen of El Salvador, seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). The Director, Los Angeles Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The record reflects that the Applicant attempted to enter the United States with a fraudulent passport in [REDACTED] 1991. On [REDACTED] 1992, the Applicant was ordered excluded in absentia. The Applicant did not comply with the order until approximately twenty years later, when the Applicant departed the United States pursuant to an approved Form I-512, Advance Parole document. The Applicant was found to be inadmissible to the United States under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 lawful permanent resident spouse and U.S. citizen daughters.

The Director noted that the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied and thus the Applicant's Form I-212 would not be approved as a matter of discretion. The Applicant's Form I-212 was denied accordingly.

In support of the instant appeal, the Applicant submits a statement and supporting documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at

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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 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 the record establishes that the Applicant was ordered excluded to El Salvador on [REDACTED] 1992, the Applicant 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).

In *Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212:

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 Applicant contends that his lawful permanent resident spouse will experience emotional, medical, and financial hardship were she to remain in the United States while he departs the United States as a result of his inadmissibility. The Applicant first maintains that he and his spouse have been together for over thirty years and have two U.S. citizen daughters together, and long-term separation will cause his spouse emotional hardship. The Applicant further explains that his wife suffers from numerous medical conditions, including diabetes, high cholesterol, and thyroid problems, and needs his daily support to deal with her health conditions. Finally, the Applicant

states that although his wife is employed, she relies on his income to make ends meet, and were he to relocate abroad, his spouse would be unable to support herself and at risk of losing their home.

In regard to relocating abroad to reside with the Applicant, the Applicant's spouse contends that she has been residing in the United States since 1984, and long-term separation from her daughters, three brothers, four sisters, extended family, the medical professionals who treat her, and her employment would cause her extreme hardship. She further maintains that she would be concerned for her safety and well-being as a result of the problematic country conditions in El Salvador, including criminal activity, inadequate health care, and the lack of employment opportunities.

In a separate decision sustaining the appeal of the denial of the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, we found that the Applicant's spouse would suffer extreme hardship, including financial and emotional hardship, if the Applicant were to relocate abroad. In addition to hardship to the Applicant's spouse, the favorable factors in this matter include hardship to the Applicant, who has resided in the United States for about thirty years, and to his U.S. citizen daughters if the Applicant were to relocate to El Salvador; the Applicant's community ties; the Applicant's long-term, gainful employment in the United States; home ownership; support letters on behalf of the Applicant; the payment of taxes; and the apparent lack of a criminal record.

The unfavorable factors in this matter are the Applicant's attempted entry to the United States by fraud or willful misrepresentation in 1991; the Applicant's failure to appear at his exclusion proceedings and the exclusion order made against the Applicant in absentia; the Applicant's failure to mention the manner in which he entered the United States in 1991 and his 1992 exclusion order when he applied for Temporary Protected Status, from 2001 to 2013, and when he applied for Advance Parole in 2013; and periods of unlawful presence and employment while in the United States.

The immigration violations committed by the Applicant are serious in nature. Nonetheless, we find that the Applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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 appeal is sustained.

Cite as *Matter of J-J-G-*, ID# 14082 (AAO Dec. 16, 2015)