U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

DATE: FEB 2 4 2015 Office: HOUSTON File:

IN RE: Applicant:

APPLICATION: Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) the Immigration and Nationality Act (the 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, Houston, Texas, denied the Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native of Chile and citizen of Peru who attempted to enter the United States on July 3, 2012 on a B1/B2 visa and was removed the next day pursuant to section 235(b)(1) of the Act. The applicant is seeking permission to reapply for admission in order to reside in the United States as the beneficiary of an approved spousal Petition for Alien Relative (Form I-130).

The director found the applicant to be inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), by virtue of her removal. The applicant 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). Determining that the factors unfavorable to the applicant outweighed those favorable to her, the director found approval of the Form I-212 was not warranted and, further, found the applicant inadmissible for willful misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Accordingly, the director denied the application. *See Denial Decision,* December 6, 2013.

On appeal, the applicant contends that consent to reapply should be granted because the favorable factors outweigh the adverse factors. The applicant further contests the finding of section 212(a)(6)(C)(i) inadmissibility and asserts that she made no misrepresentations either when procuring her visa or when using it for admission. In support, the applicant submits non-precedent decisions of the AAO, supportive statements, country condition information, and photographs. The entire record was reviewed and considered in rendering this decision.

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 (or within 20 years in the case of a second or subsequent removal ...) is inadmissible.
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> (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.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record indicates that the applicant was denied admission to the United States as a nonimmigrant on July 3, 2012 and was removed on July 4, 2012. An immigration officer determined her to be inadmissible as an immigrant without an immigrant visa and ordered her removed under section 235(b)(1) of the Act for being an intending immigrant. *See Notice and Order of Expedited Removal (Form I-860),* July 3, 2012. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act until July 2017.

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:

> 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.

Applying the *Tin* factors, we conclude that the applicant has demonstrated she deserves a favorable exercise of the Secretary's discretion.

Although the applicant was removed in 2012 for being an intending immigrant, there is no indication she misrepresented her intentions or willfully violated the terms of her 2011 admission as a B2 visitor. The applicant submits a statement disputing the director's determination that she misrepresented her intentions when she applied for a B2 nonimmigrant visa or when she sought admission with her nonimmigrant visa.[1] The record indicates she received a 10-year, multiple entry B1/B2 visa in 2005. There is evidence she used this visa for business in 2005, the same month the visa was issued, to procure equipment for the restaurant where she worked. She returned to the United States in July 2011 and was granted admission for one year for tourism. She states that from October 2011 to January 2012, she stayed in the home of a family friend whose two year-old daughter was undergoing cancer treatment. She states that she helped care for their older child and provided other assistance while the parents were at the hospital with their daughter. She further states that she received no wages for assisting her friends during their daughter's hospital stay, but rather only a transit pass and reimbursement of the out-of-pocket

[1] The decision of the field office director states that the applicant is rendered inadmissible under section 212(a)(6)(C) of the Act for "providing false information to obtain a visitor (B2) visa," but does not specify the facts that are the basis for this finding.

expenses she incurred bringing clothing and food from their home to the hospital. A letter from the family friend confirms that she did not receive wages, but only reimbursement for travel costs between the home and hospital, and states that they did not consider the arrangement to be employment and that the applicant helped them as a close family member would in a time of need.

The applicant states that when she attempted to return to the United States on July 3, 2012, she was questioned by an immigration officer and stated she had become engaged to her traveling companion during their week with her family in Peru, that she was pregnant, that she looked forward to marrying and starting a family, and that she had a return ticket to Peru for October 10, 2012. The record confirms that when questioned by an immigration officer during secondary inspection she admitted her recent engagement, pregnancy, future marriage plans, and intent to return to Peru in October 2011 for her baby shower. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867A),* July 3, 2012. In addition she admitted to residing in the United States from July 12, 2011 to June 27, 2012, and having assisted a family friend with whom she stayed when the friend's child was hospitalized for leukemia treatment.

The record does not support a finding that the applicant procured a visa or sought admission to the United States through fraud or misrepresentation. There is no indication she provided false information to obtain her visa in 2005 or that she misrepresented her intent when entering in 2005 or 2011. Further, when seeking admission on July 3, 2012, the applicant was truthful when questioned by an immigration officer, and it is precisely the applicant's candor in describing her activities during her previous visit and her future plans that led the officer to conclude she was an intending immigrant and had violated the terms of her nonimmigrant visa. For this reason she was found inadmissible under section 212(a)(7)(A)(i)(I) of the Act as an immigrant not in possession of a valid immigrant visa and ordered removed. She was not found to be inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation when she was ordered removed, and we find that, based on the evidence on the record, she is not inadmissible under section 212(a)(6)(C) and does not require a waiver of inadmissibility.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. Considering the totality of the circumstances, the positive factors outweigh the negative factors, and a favorable exercise of discretion is thus warranted in this case.

The field office director identifies as negative factors the applicant having provided false information to obtain her nonimmigrant visa, repeated violations of the immigration laws, and unauthorized employment in the United States. As noted above, the evidence on the record does not support the finding that she committed fraud or misrepresentation or engaged in unauthorized employment in the United States. Further, records show that she departed the country timely and within the three- and 12-month periods of admission granted, respectively, in 2005 and 2011.

The favorable factors in this matter are the applicant's U.S. Citizen husband and hardship to both him and the applicant if she is denied admission, letters of support from friends and family members, the apparent lack of a criminal record, the applicant's timely departure from the United

States when she was admitted as a nonimmigrant in 2005 and 2011, and the passage of almost three years since the applicant was ordered removed. The unfavorable factor in this matter is the applicant's removal from the United States in 2012.

The immigration violation committed by the applicant is serious in nature, but we find that the applicant has established that the favorable factors in her 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. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.