



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: JUN 03 2015

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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)

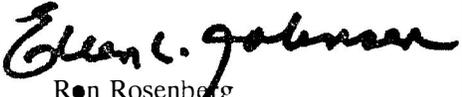
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Field Office Director, Atlanta, Georgia, 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 on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of El Salvador who was ordered deported from the United States on April 12, 1994. The applicant is inadmissible to the United States pursuant to 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). 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 reside in the United States with his U.S. citizen spouse and children.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(A)(i) of the Act and failed to submit circumstantial evidence related to his departures and absence from the United States for ten consecutive years. He further found that the applicant failed to submit documentary evidence of his relationship with his spouse. The Form I-212 was denied accordingly.

On appeal, submitted in May 2013 and received by this office in January 2015, counsel asserts that the applicant is not subject to the ten-year bar under section 212(a)(9)(B)(i)(II) of the Act, and that the applicant provided sufficient information about his spouse. He further states that inadmissibility under section 212(a)(6)(A)(i) of the Act is irrelevant to the present proceedings.

The record includes, but is not limited to, statements from the applicant and his spouse, financial records, character letters and photographs. 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 the applicant entered the United States without inspection on or about January 1, 1994. He was ordered removed *in absentia* on April 12, 1994. Therefore, he is inadmissible pursuant to section 212(a)(9)(A)(ii)(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. The applicant does not contest this ground of inadmissibility.

Counsel asserts that, while not clearly stated, the Field Office Director implied that the applicant is inadmissible under section 212(a)(9)(B)(i) of the Act for unlawful presence. Counsel's assertions related to this matter are correct. As noted by counsel, *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012) addresses the situation of aliens like the applicant who depart the United States under a grant of advance parole. While it is unclear that the Field Office Director was making that finding, the applicant is not inadmissible under section 212(a)(9)(B)(i) of the Act. The Field Office Director did state that the applicant is inadmissible under section 212(a)(6)(A)(i) of the Act for entering the United States without inspection. This ground of inadmissibility is not relevant to adjudication of a request for permission to reapply for reentry except that it may be considered a negative discretionary factor. The record also establishes, contrary to the Field Office Director's statements, that there is sufficient information in the record related to the applicant's spouse. Adjudication of a request for permission to reapply for reentry under section 212(a)(9)(A)(iii) of the Act is a discretionary finding requiring a balancing of positive and negative factors.

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 applicant states that his spouse is from Taiwan and has never been to El Salvador and it would be very difficult for his spouse and children to adapt to living in El Salvador. In addition, it would be hard for him to find work in El Salvador and there is considerable violence in El Salvador. If his wife were to remain in the United States without him it would be difficult for his spouse to run their two businesses without him and raise their children alone. The applicant's spouse states that the applicant provides moral and emotional support and that she cannot care for their children and the businesses at the same time. Also, their children are accustomed to life in the United States and would experience trauma without the applicant. In addition, her sister and mother live in the United States.

The favorable factors in this case include the applicant's lack of a criminal record, his U.S. citizen spouse; his six U.S. citizen children; hardship to his spouse and children; maintenance of legal status through TPS: an approved Form I-130, Petition for Alien Relative; statements referencing his good moral character; ties to the community through ownership of businesses and filing of tax returns.

The unfavorable factors in this case include the applicant's entry without inspection, periods of unauthorized stay, periods of unauthorized employment and failure to appear for his deportation proceedings.

After a careful review of the record, we find that the applicant has established that the favorable factors outweigh the unfavorable factors in his case and that 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.