



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

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

MATTER OF Z-X-W-

DATE: JULY 14, 2016

APPEAL OF NEBRASKA SERVICE CENTER 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 China, was found inadmissible for ten years after departure from the United States for having been previously ordered removed and seeks permission to reapply for admission to the United States prior to the expiration of this inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). U.S. Citizenship and Immigration Services (USCIS) may remove the inadmissibility bar by granting permission to reapply in the exercise of discretion.

The Director, Nebraska Service Center, denied the application. The Director indicated that as the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, had been denied, the Applicant would remain inadmissible despite an approved Form I-212. The Director concluded that the Applicant's remaining inadmissibility was a negative factor that warranted a denial of his Form I-212 as a matter of discretion.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and claims that the Director erred by not finding that the positive factors outweighed the negative factors in his case.

Upon *de novo* review, we will sustain the appeal. The evidence, including the additional evidence submitted on appeal, establishes that the Applicant merits permission to reapply for admission into the United States in the exercise of discretion.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for having been previously removed. Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), provides any alien, other than an arriving alien, who has been ordered removed or departs the United States while an order of removal is outstanding, and who seeks admission within 10 years of the date of departure, is inadmissible.

Individuals who are inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) if, prior to the date of reembarkation at a place outside the

United States, the Secretary of Homeland Security has consented to the individual's reapplying for admission.

II. ANALYSIS

The issue presented on appeal is whether the Applicant should be granted permission to reapply in the exercise of discretion. The Applicant does not contest his inadmissibility, a determination supported by the record. The Applicant contends that the positive factors in his case outweigh the negative factors, and that he should therefore be granted permission to reapply.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee, supra.*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience.")

The Applicant's U.S. citizen spouse contends that she is experiencing psychological, medical, and financial hardships as a result of her separation from the Applicant. The record establishes that the Applicant's spouse came to the United States in 1997, obtained legal permanent resident status in 2010, and thereafter naturalized. In her affidavit, the Applicant's spouse states that she married the Applicant in 2001 and had three U.S. citizen children with the Applicant. The Applicant's spouse maintains that since the Applicant's return to China, she has become depressed, felt helpless and has had suicidal thoughts. She also indicates that she struggles with being a single mother. In addition, she states that she has been diagnosed with numerous medical conditions including gastric disorder, migraines, and insomnia.

The record includes a psychiatric evaluation and treatment report indicating that the Applicant's spouse suffers from major depressive disorder with high distress anxiety and has been prescribed antidepressants to treat her condition. The psychiatrist confirms that the Applicant's spouse has had suicidal thoughts, and considers her at high risk for suicide because of the severity of her depression and her high anxiety. According to the psychiatrist, her responsibility as a mother to three children has kept her from acting on any of these thoughts. One of the children requires additional care, as he suffers from Attention Deficit Hyperactivity Disorder, depression and other issues, which is supported in the record by a neurologist's letter. The psychiatrist notes that the child's problems exacerbate the Applicant's spouse's depression and desperation for the Applicant's help. The

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psychiatrist's evaluation also discusses the Applicant's spouse's medical issues, highlighting her issues with chronic migraines. The record additionally contains letters from the Applicant's spouse's friends and members of her congregation confirming her loss of weight, inability to focus and control her temper, and her sadness following the Applicant's departure to China.

In her affidavit, the Applicant's spouse also discusses how, prior to the Applicant's return to China, she stayed home with their kids and only worked part-time to supplement the family's income. She now describes herself as solely responsible for the support of her family, and indicates that her husband is unable to send her money because he makes so little in China. Letters from the Applicant, his friends, and coworkers in China confirm that his salary is too little for him to assist his spouse in the United States. The Applicant's spouse explains that her income does not cover her expenses, and that her cousin helps her with the additional money that she needs. The psychiatrist notes that the Applicant's spouse was unable to financially and physically support two of her children and sent them to China. The Applicant's spouse explains that two of her children were in China from February 2010 through February 2014, but that they were returning to the United States because they would be unable to receive free education in China without being Chinese citizens.

In regard to relocating abroad to reside with the Applicant, the Applicant's spouse contends that she would be unable to find any employment in China and that she fears returning to China after having had three children in violation of its family planning restrictions. The Applicant's spouse also indicates that education would be difficult to obtain in China, as her children are U.S. citizens and are not registered in any household registration book. Similarly, she states that healthcare for her children, especially psychiatric care for her eldest son, is also difficult to obtain in China, complicated by their U.S. citizen status. Further, the Applicant spouse maintains that she would experience emotional hardship were she to relocate abroad due to long-term separation from her community, her church, her employment, and her friends.

The favorable factors in this case are the hardship to the Applicant's U.S. citizen spouse and 3 children, born in [REDACTED] and [REDACTED] if the waiver application is denied, as detailed above; the Applicant's 15 year marriage; letters of support for the Applicant from friends, colleagues, and family members; the Applicant's long-term residence in the United States; his community ties to the United States; the Applicant's expressed remorse; and the Applicant's employment and payment of taxes while in the United States. The adverse factors in this case are the Applicant's entry without inspection, periods of unlawful presence and employment in the United States, his conviction nearly fifteen years ago for a crime involving moral turpitude, the Applicant's placement in removal proceedings, and fraud or misrepresentation.

The Applicant's criminal and immigration violations are serious in nature. Nonetheless, we find that the Applicant has established that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.¹

¹ In a separate decision, we sustained the Applicant's appeal of the denial of his Form I-601, Application for Waiver of Grounds of Inadmissibility.

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III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of Z-X-W-*, ID# 16674 (AAO July 14, 2016)