



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

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

MATTER OF R-D-R-

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 El Salvador, was found inadmissible for having been previously ordered removed and convicted of an aggravated felony and seeks permission to reapply for admission to the United States. *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.

In addition to being found inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) as an alien previously removed and convicted of an aggravated felony, the Applicant was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within 10 years of his last departure from the United States, and pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.

The Director, Nebraska Service Center, denied the application. The Director concluded that although the Applicant had established that extreme hardship would be imposed on his qualifying relatives, he did not demonstrate that he merits a favorable exercise of discretion because his convictions were for violent and dangerous crimes and evidence did not support a finding that the hardship to his qualifying relatives would rise to the level of exceptional and extremely unusual. The Director denied the Form I-601, Application for Waiver of Ground of Inadmissibility accordingly. The Form I-212, Application for Permission to Reapply for Admission was denied as a matter of discretion.

The matter is now before us on appeal. In the appeal the Applicant submits a brief and copies of previously-submitted materials and claims that his convictions were not crimes involving moral turpitude or violent and dangerous crimes, and that he has otherwise shown that his parents will suffer exceptional and extremely unusual hardship.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for having been previously order removed and convicted of an aggravated felony. Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), provides, in pertinent part:

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 5 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.

Individuals found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii). Section 212(a)(9)(A)(iii) of the Act provides, in pertinent part:

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 continuous territory, the [Secretary of Homeland Security] has consented to the alien's reapplying for admission.

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

(b)(6)

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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"). Generally, favorable factors that come into existence after an alien is placed in removal proceedings, so-called "after-acquired equities," are accorded less weight in a discretionary determination. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301-302 (BIA 1996); *see also Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992); *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980).

II. ANALYSIS

The issues in this case are whether the Applicant is eligible to request permission to reapply for admission to the United States and, if so, whether he warrants a favorable exercise of discretion. The Applicant contends that his convictions were not for crimes involving moral turpitude, that he has shown rehabilitation, and that he and his parents suffer hardship. Because the evidence in the record establishes that the Applicant is inadmissible for a crime involving moral turpitude and his Form I-601 waiver application has been denied, no purpose would be served in granting the Applicant permission to reapply for admission as it would not result in his admissibility.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(A) of the Act as an alien previously removed and convicted of an aggravated felony; section 212(a)(9)(B)(i)(II) of the Act for having accrued unlawful presence in the United States; and section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. Specifically, the record reflects that the Applicant entered the United States on February 28, 1990, without inspection, and remained until he was removed on September 7, 2007. The Applicant thus accrued unlawful presence after the April 1, 1997, implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) until his removal in 2007. The record reflects that on [REDACTED] 2003, in the Superior Court of California, [REDACTED] the Applicant was convicted of Lewd Act with a Child in violation of section 288(C)(1) of the California Penal Code and Unlawful Sexual Intercourse with a Minor, in violation of Section 261.5(d) of the California Penal Code. The Applicant was sentenced to a 30-day work program, fined, and placed on three years of probation. The record shows that the Applicant's date of birth is [REDACTED] and the acts for which he was convicted occurred [REDACTED] 2002, making the Applicant about 28 years of age at the time of commission. The Applicant was issued a warrant or removal on July 16, 2007, and was removed from the United States on September 7, 2007.

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In a separate decision regarding the Applicant's appeal of the denial of his Form I-601 waiver application, we found the Applicant inadmissible for having been convicted of a crime involving moral turpitude and that he had not established that he warranted approval of that application as a matter of discretion.

B. Permission to Reapply

As stated above, we must weigh any unfavorable factors against the favorable factors to determine if approval of the application is warranted as a matter of discretion. An application for permission to reapply for admission is denied, in the exercise of discretion, to an individual who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). The record establishes the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. As we dismissed the Applicant's appeal of the denial of his waiver application, no purpose would be served in considering his application for permission to reapply for admission at this time.

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 not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of R-D-R-*, ID# 14190 (AAO July 14, 2016)