



U.S. Department of Justice

Immigration and Naturalization Service

H4

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted]

Office: PHILADELPHIA, PA

Date:

FEB 28 2001

IN RE: Applicant:



Application:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act U.S.C. 1182(a)(9)(A)(iii)

Public Copy

IN BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was ordered excluded and deported by an immigration judge in April 1992 and November 1997. The applicant is married to a United States citizen and is the beneficiary of an approved petition for alien relative. He seeks permission to reapply for admission into the United States under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(iii), in order to travel to the United States to reside with his wife and son.

The district director concluded that the applicant is statutorily barred from admission to the United States and denied the application.

On appeal, the applicant's spouse asserts that the admission of her husband would not be contrary to the national security, safety and welfare of the United States; her husband has been rehabilitated; he has remained outside of the United States for three consecutive years since the date of his last removal; and that he did not commit a crime involving torture or murder. She also states that he is the beneficiary of an approved petition for alien relative, is the spouse and parent of United States citizens and that the denial of his admission into the United States has resulted in extreme hardship and pain to his wife and son.

The record reflects that the applicant first applied for admission into the United States at Miami, Florida on March 4, 1992. He was intercepted by U.S. Customs officials with 5.25 pounds of marijuana concealed in film cases. The applicant was charged with smuggling a controlled substance and for possession of cannabis. He was convicted of unlawful possession and importation of cannabis on March 27, 1992, sentenced to credit for time served (24 days) and fined \$775.00. The applicant was subsequently ordered excluded and deported from the United States by an immigration judge on April 27, 1992 and was removed on June 12, 1992.

The record further reflects that subsequent to his removal in June 1992, the applicant reentered the United States in March 1994 through New York using a photo-substituted passport belonging to another person and containing a valid nonimmigrant visa which he had purchased from a smuggler in Jamaica for \$1,500. In November 1996, the applicant was arrested for forgery and falsification of documents in Ohio and turned over to immigration officials. The previous order of deportation was reinstated and, after having been convicted of reentry after deportation, the applicant was again removed from the United States at government expense on November 21, 1997.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to

receive visas and ineligible to be admitted to the United States:

(9) ALIENS PREVIOUSLY REMOVED.-

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.-

(i) ARRIVING ALIENS.-Any alien who has been ordered removed under § 235(b)(1) or at the end of proceedings under § 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 § 240 of the Act 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 Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(6)(B) of the Act, 8 U.S.C. 1182(a)(6)(B), was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and is now codified as § 212(a)(9)(A)(i) and (ii). According to the reasoning in Matter of Soriano, 21 I&N Dec. 516 (BIA 1996, A.G. 1997), the provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided. IIRIRA became effective on September 30, 1996.

An appeal must be decided according to the law as it exists on the date it is before the appellate body. See Bradley v. Richmond School Board, 416 U.S. 696, 710-1 (1974). In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. If an amendment makes the statute more restrictive after the application is filed, the

eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

Prior to 1981, an alien who was arrested and deported from the United States was perpetually barred. In 1981 Congress amended former § 212(a)(17) of the Act and eliminated the perpetual debarment and substituted a waiting period. The Service argued that most precedent case law relating to permission to reapply for admission was effectively negated by the new statute in 1981, and as a consequence, granting of these applications now requires an applicant to meet a higher standard of eligibility since the bar is no longer insurmountable.

After reviewing the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, and after noting that Congress has increased the bar to admissibility from 5 to 10 years, has also added a bar to admissibility for aliens who are unlawfully present in the United States, and has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted, it is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have who have committed a crime involving moral turpitude or have been present in the United States without a lawful admission or parole. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See Fiallo v. Bell, 430 U.S. 787 (1977); Reno v. Flores, 507 U.S. 292 (1993); Kleindienst v. Mandel, 408 U.S. 753, 766 (1972). See also Matter of Yeung, 21 I&N Dec. 610, 612 (BIA 1997).

The Service has held that an application for permission to reapply for admission to the United States may be approved when the applicant establishes he or she has equities within the United States or there are other favorable factors which offset the fact of deportation or removal at Government expense and any other adverse factors which may exist. Circumstances which are considered by the Service include, but are not limited to: the basis for removal; the recency of removal; the length of residence in the United States; the moral character of the applicant; the alien's respect for law and order; the evidence of reformation and rehabilitation; the existence of family responsibilities within the United States; any inadmissibility to the United States under other sections of the law; the hardship involved to the alien and to others; and the need for the applicant's services in the United States. Matter of Tin, 14 I&N Dec. 371 (Reg. Comm. 1973). An

approval in this proceeding requires the applicant to establish that the favorable aspects outweigh the unfavorable ones.

It is appropriate to examine the basis of a removal as well as an applicant's general compliance with immigration and other laws. Evidence of serious disregard for law is viewed as an adverse factor. Matter of Lee, 17 I&N Dec. 275 (Comm. 1978). Family ties in the United States are an important consideration in deciding whether a favorable exercise of discretion is warranted. Matter of Acosta, 14 I&N Dec. 361 (D.D. 1973).

The favorable factors in this matter are the applicant's family responsibilities and general hardship to the applicant, his wife and son due to separation. The unfavorable factors include the applicant's conviction for importation and possession of cannabis in 1992 and subsequent order of exclusion and deportation; his unlawful reentry in 1994 without prior permission to reapply and in possession of fraudulent documents; his arrest for forgery and falsification of documents in 1996; and the reinstatement of the prior order of deportation and removal at government expense in 1997.

The applicant's actions in this matter cannot be condoned. He has failed to establish a respect for law and order or that he has been rehabilitated. In addition, the applicant is permanently barred from admission into the United States under § 212(a)(2)(A)(i) of the Act, due to his conviction for the importation and possession of a controlled substance and no waiver is available. He is also inadmissible to the United States under § 212(a)(6)(C) of the Act, due to his entry by fraud or misrepresentation in 1994. Based on the foregoing, the applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

In discretionary matters, the applicant bears the full burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). After a careful review of the record, it is concluded that the applicant has failed to establish that he warrants the favorable exercise of the Attorney General's discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.