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U.S. Department of Justice

Immigration and Naturalization Service

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



FILE:

Office: Vermont Service Center

Date:

MAR 27 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, 8 U.S.C. 1182(a)(9)(A)(iii)

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IN BEHALF OF APPLICANT: Self-represented

Public Copy

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 invasion of privacy

DISCUSSION: The application was denied by the Director, Vermont Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Ecuador who was present in the United States without a lawful admission or parole on January 15, 1993. On August 18, 1998, the applicant was granted voluntary departure until December 16, 1998 in lieu of removal. He failed to depart, therefore he is inadmissible under § 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii).

The applicant engaged in a sham marriage on December 5, 1996 when he married Luz Victorino, a native and citizen of the Dominican Republic, who represented herself as Raquel Suarez, a United States citizen. The facts of that sham marriage were fully addressed on appeal and need not be revisited on motion. The applicant seeks permission to reapply for admission into the United States under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii).

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On motion, the applicant submits affidavits from people who know him and who are familiar with his past marriage. In the three affidavits, all affiants assert that the applicant married for love and not for convenience and indicate that the applicant's wife had problems with drugs.

The applicant has no equities in the United States. His only favorable factors include the filing of income tax returns and the absence of a criminal record.

The three affidavits do not overcome the several adverse factors in this matter including his unlawful entry, his failure to depart after being granted voluntary departure, his participation in a fraudulent marriage scheme, his employment without Service authorization and his lengthy unauthorized presence in the United States.

Nothing could be clearer than Congress' desire in recent years to limit, rather than to extend, the relief available to aliens who have violated immigration laws. 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).



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 he warrants the favorable exercise of the Attorney General's discretion. Accordingly, the order dismissing the appeal will be affirmed.

ORDER: The order of May 24, 2000 dismissing the appeal is affirmed.