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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: Nebraska Service Center

Date:

**MAY 10 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)

IN BEHALF OF APPLICANT:



**Public Copy**

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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

**DISCUSSION:** The application was denied by the Director and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The Associate Commissioner affirmed that decision on a motion to reopen. The matter is before the Associate Commissioner on a second motion to reopen. The motion will be dismissed and the order dismissing the appeal will be reaffirmed.

The applicant is a native and citizen of India who initially was admitted to the United States as a nonimmigrant crewman on May 5, 1986. His story of remaining longer than authorized, being found deportable, being granted voluntary departure, being denied political asylum, failing to depart voluntarily, becoming the beneficiary of an approved employment-based preference visa petition, departing from the United States, being issued an immigrant visa, being lawfully admitted for permanent residence in September 1990 without having obtained permission to reapply for admission, his subsequent departure, his application for admission as a returning resident in 1992, the Board of Immigration Appeals dismissing his appeal but granting him voluntary departure in October 1992, his becoming the beneficiary of another employment-based visa petition, and his being ordered excluded and deported in 1994 is well documented in prior decisions and will not be addressed in detail in this matter.

The applicant's wife became a naturalized U.S. citizen in January 1999 and he has three children, one of whom is a naturalized U.S. citizen and the other two are lawful permanent residents. 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), to remain in the United States to support his family.

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

On the second motion, counsel's reemphasizes that the applicant initially self-deported while his appeal was pending with the Board and without knowing that such a departure would render him inadmissible must be given due consideration.

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.

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 ties, the absence of a criminal record, the need for the applicant's presence to care for his family, the approved employment-based visa petition, the need for his services and the prospect of considerable hardship to the family.

The unfavorable factors in this matter include the applicant's initial remaining longer than authorized, his being ordered deported, his failure to depart voluntarily and his obtaining an immigrant visa without having been granted permission to reapply and failing to disclose his being ordered deported on his immigrant visa application.

The applicant was admitted to the United States as a nonimmigrant crewman on May 5, 1986, with authorization to remain until June 3, 1986. He remained longer than authorized. He was apprehended on August 7, 1986, applied for political asylum on August 18, 1986, and became the beneficiary of an approved employment-based visa petition in November 1986. The applicant's entire Service file is not present for review. Ordinarily, when an applicant applies for political asylum, they are granted employment authorization. His application for asylum was denied in October 1987 and he was granted voluntary departure on or before December 14, 1987. The applicant filed an appeal with the Board. Rather than wait for the Board's decision, which was rendered nearly five years later in October 1992, the applicant departed for India to apply for his immigrant visa without disclosing the fact that he had been found deportable by an immigration judge.

Whether or not the applicant knew that such a departure from the United States would render him inadmissible is secondary to what he attested to in applying for his immigrant visa. Had the consular officer known that the applicant had been found deportable in October 1987, further inquiry would have led to the true facts. The applicant clearly cut off a line of inquiry which was material to the issuance of his immigrant visa.

The applicant's actions in this matter cannot be condoned. He took action to apply for an immigrant visa for which he had been classified as eligible to obtain but without revealing the true

facts of his past immigration history to the consular officer. It is concluded that the applicant has failed to 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 order dismissing the appeal will be reaffirmed.

**ORDER:** The order of August 14, 2000, dismissing the appeal is reaffirmed.