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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

Handwritten initials: H4

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



AUG 19 2003

FILE: 

Office: Nebraska Service Center

Date:

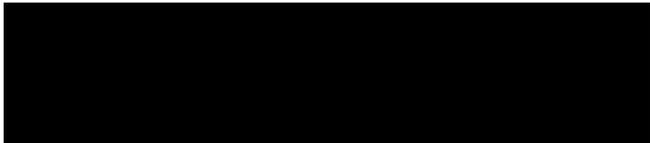
IN RE: Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Handwritten signature: Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (I-212 application) was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole. On April 23, 1997, the applicant was found to be inadmissible from the United States by an immigration judge, and ordered removed in absentia. The removal order subjected the applicant to a 10-year reentry bar into the United States. The record indicates that the applicant failed to depart the country. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to live with his U.S. citizen wife and his U.S. citizen child.

The director determined that the unfavorable factors outweighed the favorable factors in the applicant's case. The I-212 application was denied accordingly.

On appeal, counsel asserts that the Bureau of Citizenship and Immigration Services ("Bureau") abused its discretion in denying the applicant's I-212 application. Counsel refers the AAO to previous documentation submitted by the applicant, stating that the applicant is not a criminal and that the applicant, his wife and his child will suffer emotionally and financially if they have to move to Mexico or if his wife and child remain in the U.S. without the applicant.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9) states in pertinent part:

(9) Aliens Previously Removed.-

(A) Certain aliens previously removed.-

. . . .

(ii) [A]ny alien . . . who-

(I) Has been ordered removed under section 240 or any other provision of law . . . 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 [now the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal (I-212 Application) requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The Seventh Circuit Court of Appeals held in *Garcia-Lopez v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation (removal) order has been entered. Furthermore, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation (removal) proceedings, and with knowledge that the alien might be deported. See *Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992).

The favorable factors in the applicant's case are the prospect of hardship to his U.S. citizen wife and child and the fact that he has no criminal record.

The unfavorable factors in the case include the applicant's being found removable and being ordered removed by an immigration judge, his failure to depart the country, his unauthorized employment and his illegal presence in the United States.

The record reflects that the applicant's wife was born in the U.S. and that she is a U.S. citizen. The record reflects further that the applicant and his wife were married in [REDACTED] Mexico on May 25, 1996. There is no evidence in the record that the applicant's wife filed a petition for alien relative for the applicant at that time, and it can be assumed that the applicant's wife was aware that the applicant subsequently entered the U.S. in an illegal status making him subject to possible removal proceedings. Moreover, the applicant's child was born after the applicant was ordered removed from the United States. Hardship to the applicant's wife and child will thus be given diminished weight.

The applicant has not established that the favorable factors in his case outweigh the unfavorable factors. By failing to appear at his removal hearing, subsequently failing to depart from the U.S. in 1998, and then remaining unlawfully in the U.S. for several years, the applicant has shown a lack of respect for the immigration laws of the United States as well as a lack of rehabilitation. The director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. See *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). The applicant in this case failed to establish that he warrants a favorable exercise of the Secretary's discretion.

ORDER: The appeal will be dismissed.