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

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

FILE [REDACTED] Office: CHERRY HILL, NJ

Date: AUG 20 2003

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

PUBLIC COPY

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.

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 District Director, Cherry Hill, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 40-year old native of the former Yugoslavia and a citizen of Macedonia. The applicant was found to be inadmissible to the United States pursuant to sections 212(a)(6)(A), (B) and 212(a)(9) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(A), (B) and 1182(a)(9) for being present in the United States without being admitted or paroled, for failing to attend removal proceedings, and for having been ordered removed from the United States.

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 daughter.

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 for the petitioner asserts that the director abused her discretion by denying the application for permission to reapply for admission to the United States after deportation or removal. Counsel asserts that the director failed to take into account that the applicant left the United States for almost seven years before attempting to re-enter. Counsel further argues that the director failed to take into account the fact that the applicant was ordered deported not for fraud or any crimes but rather for entering the United States without inspection. Counsel asserts that the applicant's removal would cause tremendous hardship because he is the homemaker in his family and he helps care for his ill in-laws, repair their home and pay for his United States citizen daughter's medical bills.

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.-

(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.

(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.

According to the evidence on the record, the applicant initially entered the United States without inspection in March 1986. He failed to attend a hearing before an immigration judge and was ordered deported on April 22, 1987. The applicant stated that he left the United States in June 1992. According to the evidence on the record, the applicant entered the United States on October 5, 1995 on a nonimmigrant visitor's visa and departed on December 13, 1995 and re-entered without inspection on January 3, 1999. The applicant was ordered removed on December 27, 1999.

Approval of an I-212 application requires that the favorable aspects of an 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).

This office finds the following favorable factors: he has no known criminal record and his United States citizen wife needs him to help care for her ill parents and their young daughter.

This office finds the following unfavorable factors: the applicant has shown total disregard for the immigration laws of this country. He entered this country twice without inspection. He failed to appear at two removal hearings. He re-entered the country after removal without obtaining permission to reapply for admission. According to the evidence on the record, he informed an officer of the Immigration and Naturalization Service (now known as the Bureau of Citizenship and Immigration Services) that he and his first wife had been granted political asylum in this country. There is no evidence that he had been granted asylum,¹ so it appears that he misrepresented his immigration status to an officer of the Bureau. The applicant is inadmissible on several grounds cited above.

This office finds that for the reasons stated above, the unfavorable factors in the applicant's case outweigh the favorable factors. It is further noted that the applicant wed a United States citizen and had a United States citizen child after he was ordered deported. Hardship to the applicant's wife and child will be given diminished weight. 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).

In discretionary matters, the applicant bears the full burden of proving that he merits an exercise of discretion by the Secretary of Homeland Security ("Secretary"). See *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). The applicant

¹ According to Bureau records, an immigration judge denied the applicant's asylum application.



in this case has failed to establish that he warrants a favorable exercise of discretion.

ORDER: The appeal will be dismissed.