

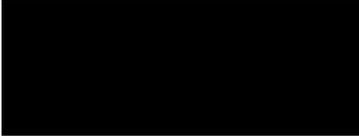


U.S. Department of Justice
Immigration and Naturalization Service

H4

PUBLIC COPY

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



FEB 28 2003

FILE: [Redacted] Office: Vienna

Date:

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)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

**Identifying data deleted to
prevent unauthorized
invasion of personal privacy**

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 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 that 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. [Redacted]
Administrative Appeals Office

DISCUSSION: The Form I-212 application was denied by the Officer in Charge, Vienna, Austria, and the Form I-601 application was rejected. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal of the Form I-212 application will be dismissed.

The applicant is a native and citizen of Poland who was admitted to the United States on August 9, 1990, as a nonimmigrant visitor who remained longer than authorized. On February 10, 1992, an Order to Show Cause was served on him. The applicant applied for asylum and his applications for asylum and withholding of deportation were denied by an immigration judge on August 23, 1993. An appeal of that decision was dismissed by the Board of Immigration Appeals (the Board) on March 7, 2000. His request for a stay of deportation was denied and that decision was affirmed by the Board on June 22, 2000.

The applicant divorced his Polish wife on November 15, 1994, and married [REDACTED] a U.S. citizen, in December 1994, while in deportation proceedings. He was deported from the United States on November 5, 2001. The applicant became the beneficiary of an approved Petition for Alien Relative on February 5, 2002.

He was found to be inadmissible to the United States by a consular officer under sections 212(a)(2)(A)(i)(I) and 212(a)(9)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I) and § 1182(a)(9)(B)(ii), for having been convicted of a crime involving moral turpitude and other violations (including assault and battery, domestic violence and disorderly conduct) and for having been removed from the United States.

The officer in charge denied the Form I-212 application after concluding that the unfavorable factors outweighed the favorable ones. The officer in charge noted that the applicant had been arrested more than one dozen time for domestic violence over a period of seven years. The officer in charge then rejected the Form I-601 application pursuant to O.I. § 212.7(a)(1)(i).

The applicant filed an appeal of that decision on November 10, 2002. On February 4, 2003, the applicant's wife, Diane Lahey-Durda notified the Service that she has filed for divorce from the applicant and no longer wants to pursue the applicant's immigration status.

Section 212(a)(9)(A) of the Act provides, in part, that:

(i) 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) Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 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) 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.

Congress has increased the bar to admissibility from 5 to 10 years. Congress has also added a bar to admissibility for aliens who are unlawfully present in the United States. In addition, Congress 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. In IIRIRA, Congress has added new and amended crimes, new grounds of inadmissibility, new grounds of deportability, and has enhanced enforcement authorities. 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.

There are no favorable factors in this matter.

The unfavorable factors in this matter include the applicant remaining longer than authorized, his criminal record, his deportation, and the fact that his wife is filing for divorce which will cancel his eligibility for an immigrant visa.

The applicant's actions in this matter cannot be condoned, and he has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Attorney General's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.