



U.S. Department of Justice

Immigration and Naturalization Service

H4

**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

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



FILE [Redacted]

Office: Athens

Date:

FEB 28 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)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii), filed in conjunction with Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v)

IN BEHALF OF APPLICANT: [Redacted]

**PUBLIC COPY**

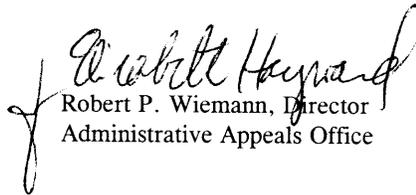
INSTRUCTIONS:

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 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Form I-212 and Form I-601 applications were denied by the Officer in Charge, Athens, Greece, and the matter is now before the Administrative Appeals Office on appeal. The Form I-212 appeal will be dismissed. The decision on the Form I-601 application will be withdrawn, and the application will be rejected.

The applicant is a native and citizen of Jordan who was admitted to the United States on July 31, 1990, as a nonimmigrant student. He subsequently fell out of status and was placed in removal proceedings. On June 23, 1993, an immigration judge denied his application for asylum, found him deportable, and granted him voluntary departure until January 17, 1999, with extensions. The Board of Immigration Appeals denied his appeal of that decision on December 17, 1998. On March 2, 2000, his request for an extension of voluntary departure was denied and he was taken into custody on June 6, 2000 and deported from the United States. Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

He was also found to be inadmissible under section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii), for having been unlawfully present in the United States for an aggregate period of one year or more from February 25, 1999, until June 7, 2000. The applicant married a lawful permanent resident on March 2, 1996, who became a naturalized U.S. citizen on April 30, 1999. He is the beneficiary of an approved Petition for Alien Relative. The applicant seeks permission to reapply under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The officer in charge concluded that the applicant failed to establish that the favorable factors outweighed the unfavorable ones and denied the application accordingly.

On appeal, counsel states that the applicant was a productive and contributing member of society and had been the sole wage earner for the family. Counsel indicates that the applicant cannot find work in Jordan and cannot afford to provide care and comfort to his citizen wife and two minor children. Counsel states that they are awaiting the arrival of their third child.

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 continuous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). In IIRIRA, Congress imposed restrictions on benefits for aliens, enhanced enforcement and penalties for certain violations, eliminated judicial review of certain judgments or decisions under certain sections of the Act, created a new expedited removal proceeding, and established major new grounds of inadmissibility. Nothing could be clearer than Congress's desire in recent years to limit, rather than to extend, the relief available to aliens who have violated immigration law. 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).

Although guidelines for considering permission to reapply for admission applications were promulgated in *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), and in *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), these holdings were rendered long before Congress amended the Act from 1981 through the present 1996 IIRIRA amendments and beyond. It is specifically noted that the Commissioner in *Matter of Lee*, referred to the intent of Congress in enacting former sections 212(a)(16) and (17) of the Act, 8 U.S.C. §§ 1182(a)(16) and (17), in the conclusions and recommendations of the Senate Committee on the Judiciary in its report dated 1950. The Committee also reviewed section 3 of the 1917 Act in its study.

Even though the decisions in *Tin* and *Lee* have not been overruled, Congress and the courts following the 1981 amendments and onward have clearly shown in their intent, and in the legislation and in their decisions, that individuals who violate immigration law are viewed unfavorably. The later statutes and judicial decisions have effectively negated most precedent case law rendered prior to 1981.

Such case law is still considered but less weight is given to favorable factors gained after the violation of immigration laws following statutory changes and judicial decisions.

Even the Regional Commissioner in *Tin* held that an alien's unlawful presence in the United States is evidence of disrespect for law. The Regional Commissioner noted also that the applicant gained an equity (job experience) while being unlawfully present subsequent to that return. The Regional Commissioner stated that the alien obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country. The Regional Commissioner then concluded that approval of an application for permission to reapply for admission would appear to be a condonation of the alien's acts and could encourage others to enter without being lawfully admitted to work in the United States.

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. 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.

In support of this conclusion it is noted that the statute now provides at section 212(a)(6)(A)(i) of the Act that an alien who is unlawfully present in the United States without a lawful admission or parole after April 1, 1997, is inadmissible and there is no waiver available. There is an exception for battered aliens. Such an alien cannot seek adjustment of status except for certain aliens eligible under section 245(i) of the Act. Therefore, many of the considerations listed in *Tin* in 1973 are now moot based on this IIRIRA amendment by Congress. In order for the alien to have the ground of inadmissibility under section 212(a)(6)(A)(i) of the Act removed, the alien must depart the United States.

It is also noted under section 212(a)(9)(C) of the Act, that aliens who were unlawfully present in the United States for an aggregate period of more than one year after April 1, 1997, and subsequently departed or who were previously ordered removed (and actually left the United States) and who subsequently enter or attempt to reenter the United States without being admitted on or after April 1, 1998, are inadmissible until they have resided outside the United States for at least 10 years. Therefore, many of the considerations listed in *Tin* in 1973 are now moot based on this IIRIRA amendment by Congress.

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. 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 Service, following more recent judicial decisions and the Congressional amendments, has accorded less weight to an applicant's equities gained following the commencement of removal proceedings, if the equities were gained while the applicant was unlawfully present in the United States or after a violation of law. The statute provides in section 240 of the Act, 8 U.S.C 1229, for the consideration of a certain amount of continuous physical presence in the United States for aliens seeking cancellation of removal. The present applicant is not seeking cancellation of removal.

The court held in *Garcia-Lopez v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, 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 proceedings, with knowledge that the alien might be deported. *Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992), *cert. denied*, 507 U.S. 971 (1993). It is also noted that the Ninth Circuit Court of Appeals in *Carnalla-Muñoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that after-acquired equities, referred to as "after-acquired family ties" in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded great weight by the district director in considering discretionary weight. The applicant in the present matter entered the United States in July 1990, failed to comply with the conditions of his admission, and was found deportable. That decision was affirmed by the Board in July 1993, and he married his spouse in March 1996 while in deportation proceedings. He now seeks relief based on that after-acquired equity.

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 two minor children, the approved Petition for Alien Relative, and the prospect of general hardship to the family.

The unfavorable factors in this matter include the applicant's failure to maintain his nonimmigrant status, his being found deportable, his failure to depart at the expiration of his voluntary departure date, and his unlawful presence in the United States. The Commissioner stated in *Matter of Lee, supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

The applicant's actions in this matter cannot be condoned. His equity, a marriage entered into while in deportation proceedings,

can be given only minimal weight. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Service instructions at O.I. § 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded. The present record reflects that both the Form I-212 application and the Form I-601 applications were adjudicated.

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. The appeal of the decision on the Form I-212 application will be dismissed. The decision on the Form I-601 application will be withdrawn, and the application will be rejected.

**ORDER:** The appeal of the Form I-212 application is dismissed. The officer in charge's decision on the Form I-601 application is withdrawn and the application is rejected.