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U.S. Department of Justice

Immigration and Naturalization Service

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



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

FILE:  Office: Copenhagen

Date: FEB 28 2003

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)

IN 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 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 application was denied by the Assistant Officer in Charge, Copenhagen, Denmark, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native of Iran and naturalized citizen of Sweden who was admitted to the United States on March 15, 1996, under the Visa Waiver Pilot Program (VWPP), section 217 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1187. The applicant remained beyond June 14, 1996, the maximum time allowed, and overstayed her authorized period of admission by two years and nine months. A Notice of Alien Determination of Deportability Warrant for Removal was issued on March 24, 1999, and she was deported from the United States on March 30, 1999, as an alien who is inadmissible under section 237(a)(1)(B) of the Act, 8 U.S.C. § 1227(a)(1)(B). Therefore, she is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant married her fourth spouse, a U.S. citizen, in Sweden on June 30, 1999, and she is the beneficiary of an approved Petition for Alien Relative. She 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).

The officer in charge determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, counsel states that the applicant's spouse is being treated for depression due to his wife's inability to return to the United States. Counsel states that the applicant's spouse would be forced to abandon his U.S. citizen family, his property and employment in the United States in order to join his wife in Sweden where he is not likely to find suitable employment. Counsel states that the applicant has no family in Sweden and her mother resides in the United States and suffers from cancer. These statements are unsupported in the record.

Counsel indicates that a brief will be forthcoming within 30 days. No additional documentation has been entered into the record since the appeal was filed on August 27, 2002. Therefore, a decision will be rendered based on the record as constituted.

Section 217(b) of the Act provides that an alien must waive his or her rights to review or appeal the immigration officer's determination as to the admissibility of the alien at a port of entry or to contest any action for removal of the alien. The applicant was removed under section 237 of the Act, 8 U.S.C. § 1227.

Pursuant to 8 C.F.R. § 217.4(b)(2), removal by the district director under paragraph (b)(1) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

Section 212(a)(9)(A) of the Act provides 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 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)(A)(ii) of the Act provides that aliens who have been otherwise ordered removed, ordered deported under former sections 242 or 217 of the Act, 8 U.S.C. §§ 1252 or 1187, or ordered excluded under former section 236 of the Act, 8 U.S.C. § 1226, and who have actually been removed (or departed after such an order) are inadmissible for 10 years. The provision holding aliens inadmissible for 10 years after the issuance of an exclusion or deportation order applies to such orders rendered both before and after April 1, 1997.

Section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and is now codified as section 212(a)(9)(A)(i) and (ii). The provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided. IIRIRA became effective on September 30, 1996.

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. *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973). An approval in this proceeding requires the applicant to establish that the favorable aspects outweigh the unfavorable ones.

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).

The favorable factors in this matter are the family ties, the approved immigrant visa petition and the absence of a criminal record.

The unfavorable factors in this matter include the applicant's failure to abide by the conditions of her admission by departing when required and her being removed.

The applicant 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 he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has not established that a favorable exercise of the Attorney General's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.