

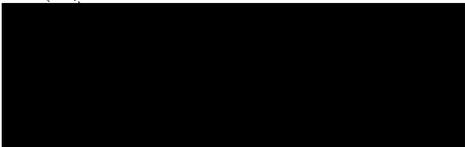
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



FILE: 

Office: Manila

Date: JUN 10 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)

ON BEHALF OF APPLICANT: Self-represented

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Manila, Philippines, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was lawfully admitted to the United States as a conditional resident on June 27, 1991. On May 26, 1995, that status was terminated based on the fact that she failed to establish that her marriage was entered into in good faith. The applicant divorced her original petitioner, [REDACTED] in May 1994. She continued to reside in the United States without authorization and married her present spouse, a native of the Philippines and naturalized U.S. citizen, on January 30, 1998. The applicant departed the United States on December 5, 1998.

On April 18, 1999, the applicant attempted to procure admission into the United States by fraud by presenting an altered passport. She was found to be inadmissible to the United States at entry under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or misrepresentation. The applicant was removed from the United States on April 19, 1999, under section 235(b)(1)(A)(i) of the Act, 8 U.S.C. § 1225(b)(1)(A)(i). Therefore, she is also inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered expeditiously 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).

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

On appeal, the applicant states that she wants to be with her husband and daughter. She states that it is very difficult for her to be separated from her daughter and does not want her to be raised by a baby sitter.

As part of her appeal, the applicant also provided a June 4, 2001 decision from a court in the Philippines in which she was found not guilty of possession of a tampered passport. While this decision has no bearing on these proceedings, it is noted that as part of her defense the applicant claimed that she had no knowledge that her passport was tampered with and that she had nothing to do with the tampering, as she had no reason to do so. She informed the court that she could easily gain entry into the U.S. as she had been an immigrant since 1991. As evidence she presented a temporary alien card. She told the court that she did not have a "green card" as she had surrendered it when she married in 1998 and had not been issued a new one.

The applicant was aware that her conditional residency was terminated in 1995 and she was never issued a permanent "green card." In 1999, when she attempted to enter the U.S. with the tampered passport, she had been out of status for four years and

had no legal right to enter the U.S. Her obviously inaccurate testimony regarding her legal status in the U.S. casts considerable doubt on the remainder of her testimony in court.

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.

(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 Secretary, Department of Homeland Security, has consented to the alien's reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) established the bar to admissibility and the waiting period as 5 years for aliens who are expeditiously removed under section 235(b)(1)(A)(i) of the Act, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) 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. 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.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have violated immigration laws. 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 *Fiello 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).

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). 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).

In *Matter of Tin*, the Regional Commissioner held that such an unlawful presence 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 admitted to work in the United States unlawfully. Following *Tin*, an equity gained while in an unlawful status can be given only minimal weight.

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 an after-acquired equity, 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 1991 as a conditional resident, failed to show that her marriage was bona fide, terminated that marriage in 1994, married her present spouse in 1998 while unlawfully present in the United States, departed the United States, and attempted to procure readmission by fraud in 1999. She now seeks relief based on her present marriage, an after-acquired equity.

The favorable factors in this matter include her family ties, the absence of a criminal record, the approved petition for alien relative, and the alleged hardship to family members.

The unfavorable factors in this matter include the applicant's remaining longer than authorized after her conditional status was terminated, her attempt to reenter the United States by fraud, and her being ordered removed from the United States. The Commissioner stated in *Matter of Lee*, *supra*, that he could only relate a positive factor of residence in the United States 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. Her equity (marriage) gained while violating her conditional resident status can be given only minimal weight. 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 she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish the warranting of a favorable exercise of the Attorney General's discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.