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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: Vermont Service Center

Date: **MAY 9 2003**

IN RE: Applicant: 

APPLICATION: Application for Permission to Reapply for Admission into the U.S. under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON 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 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 Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who was found to be inadmissible to the United States at entry under section 212(a)(6)(C)(i) and section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and § 1182(a)(7)(A)(i)(I), for having procured a visa or other documentation by fraud and for being an alien not in possession of a valid visa or lieu document. She was removed from the United States under section 235(b)(1)(A)(i) of the Act, 8 U.S.C. § 1225(b)(1)(A)(i), on June 27, 2001. Therefore, she is 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 director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, counsel states that the denial decision only contains one favorable factor. Counsel asserts that the applicant is a successful business woman who, along with her husband, established and owns her own paper packaging products company which employs approximately 70 people. The applicant is the President and CEO of a branch office in Brooklyn that markets and sells the products made in China. Counsel states that the applicant has traveled to the United States on four occasions during the years 2000-2001 for the purpose of overseeing company business and has never violated the terms of her visa. The applicant was seeking to enter the United States to have meetings with customers. Counsel further states that not revealing her connection to the U.S. company that issued the invitation for her visa was not a material misrepresentation which would have led to a denial of her visa.

The record reflects that in applying for her B-1 business visa the applicant submitted a letter from [REDACTED] a company she owns along with her husband. The letter, which was addressed to the applicant and her husband in their capacity as president and manager of their company in China, was signed by her husband using an alias, [REDACTED] President of [REDACTED]. It invited them to visit [REDACTED] to inspect the operation, conduct market research, sign long-term contracts, confer on business plans and discuss possibilities of expanding business cooperation.

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 Attorney General [now Secretary 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).

The applicant has not lived in the U.S. and has not mentioned any family ties. Though counsel asserts that the applicant's company in the U.S. should be considered a favorable factor, he has not shown that her presence is essential to the functioning of SGL, International or that any hardship would come to anyone if she were not allowed to return to the U.S.

Counsel's assertion that the visa would very likely have been approved is speculative. By not revealing her connection to [REDACTED] (her husband) and [REDACTED] a company for which counsel states she is President and CEO, the applicant cut off a material line of questioning regarding remuneration and whether she would, in fact, be involved in gainful employment during her stay in the U.S., both factors that could be reasons for denying the visa. Though she had been issued a visa prior to the visa discussed in this proceeding, the record also shows that she had been denied a visa on four other occasions. See December 11, 2000 fax from [REDACTED] Vice Counsel, American Consulate General, Shanghai, China, to [REDACTED]

The favorable factor in this matter is the absence of a criminal record.

The unfavorable factors in this matter include the applicant's procuring a nonimmigrant visa by material misrepresentation and her removal from the United States.

The applicant's actions in this matter cannot be condoned. 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.