

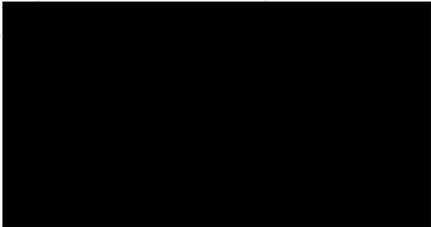
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U.S. Citizenship
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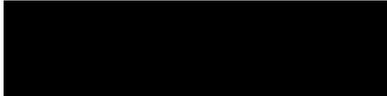
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DEC 07 2004

FILE: 
EAC-03-125-50418

Office: VERMONT SERVICE CENTER

Date:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native Egypt and citizen of Australia who entered the United States as a non-immigrant visitor for pleasure on January 21, 1997, and married a U.S. citizen on March 27, 1997. On May 13, 1998, the applicant and her spouse appeared before the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)) for an interview regarding her application for permanent residence. The applicant's spouse admitted under oath, that his marriage with the applicant was not valid. The applicant's spouse further stated that he and the applicant never lived together, as husband and wife, and that he was paid \$2,000 to marry the applicant and an additional \$2,000 after the adjustment interview. The applicant was subsequently placed in deportation proceedings and on June 3, 1998, she was removed from the United States. The record reflects that the applicant married a U.S. citizen on June 12, 2000, in Cairo, Egypt and is the beneficiary of an approved petition for alien relative. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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) in order to travel to the United States to reside with her U.S. citizen spouse.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated February 23, 2004.

On appeal counsel states that the Director erroneously stated in his decision that the Service arrested the applicant on February 21, 1995. Counsel states that the applicant was never arrested by the Service but does not dispute the fact that the applicant was ordered removed on May 29, 1998. In addition on appeal counsel states he will be submitting separated evidence. The appeal was filed on March 12, 2004, and to this date more than eight months later no additional documentation has been received by the AAO.

A review of the record of proceedings does not support the Director's statement that the Immigration and Naturalization Service arrested the applicant on February 21, 1995. The AAO finds this statement to be harmless since the applicant was removed from the United States on June 3, 1998, and therefore she is inadmissible under section 212(a)(9)(A)(ii) of the Act.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(ii) Other aliens.- 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 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' 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) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (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.

Section 204(c) of the Act states in pertinent part that:

Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General [now Secretary, Homeland Security, "Secretary"] to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8 C.F.R. § 204 (a)(1)(ii) states in pertinent part:

(a) Petition for a spouse.

(1) Eligibility. A United States citizen or alien admitted for lawful permanent residence may file a petition on behalf of a spouse.

....

(ii) Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

The AAO finds that the evidence contained in the applicant's alien file clearly establishes that the applicant was previously involved in a sham marriage for immigration purposes. As such, the applicant was clearly not eligible to be approved as the beneficiary of an I-130 petition filed by her present spouse. The AAO notes that in the present case, the Director, Vermont Service Center, must follow the regulations and statutory law provided for in section 204 of the Act, and that, given the determination of a sham marriage, the Director had no authority to approve an I-130 petition on behalf of the applicant.¹

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

A review of the documentation in the record of proceeding reflects that the applicant is subject to the provision of section 204(c) of the Act, and she is not eligible for any relief under this Act. Therefore no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Accordingly the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that based on the evidence in the record, a CIS revocation of the applicant's present I-130 visa petition would be proper. See Section 205 of the Act, 8 U.S.C. § 1155.