



U.S. Citizenship
and Immigration
Services



FILE:



Office: ATHENS, GREECE

Date: DEC 27 2004

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

PUBLIC COPY

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

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Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

The applicant is a native and citizen of Yemen who entered the United States as a non-immigrant visitor for pleasure on March 24, 2000, with an authorized period of stay until September 23, 2000. The applicant applied for asylum on September 22, 2000, with the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)). On December 7, 2000, the applicant was interviewed for asylum status and he was referred to an Immigration Judge for a court hearing. On June 13, 2001, an Immigration Judge ordered the applicant removed from the United States pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(1)(B). He filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on March 19, 2002. The applicant failed to surrender for removal or depart from the United States. The applicant was apprehended by the Taylorsville Police Department and on September 26, 2002, he was removed from the United States. He is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 his U.S. citizen spouse and stepchild.

The Officer in Charge 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 Officer in Charge Decision* dated February 26, 2004.

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.

On appeal the applicant's spouse submits a letter in which she states that she and her child would suffer hardship if the waiver application were denied. In addition she submits letters from family and friends regarding the applicant's good moral character and the prospective hardship she and her child would suffer if the Form I-212 were denied. Furthermore the applicant's spouse submits copies of telephone bills to show the daily communication between her and the applicant. Finally the applicant's spouse submits a letter from her doctor stating that she has been treated for anxiety and depression since November 5, 2002.

Unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The physician states that the applicant's spouse has been treated for anxiety and depression since November 5, 2002, and that she was not on medication prior to his removal and that since that time she has been under a great deal of stress. The physician who signed the letter did not indicate his qualification to make this determination and no additional detail of the type of treatment, if any, she is receiving was provided.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis of deportation; the recency of the deportation; the length of legal residence in the U.S.; the applicant's moral character and his respect for law and order; evidence of reformation and rehabilitation; the applicant's family responsibilities; and hardship to if the applicant were not allowed to return to the U.S.

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

[T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would be a

condonation of the alien's acts and could encourage others to enter without being admitted to work in the United States unlawfully. *Id.*

The court held in *Garcia-Lopes 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. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie 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. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper.

The applicant in the present matter married his U.S. citizen spouse on November 17, 2002, in Sanaa, Yemen, more than eight months after the BIA dismissed his appeal regarding his removal. He now seeks relief based on that after-acquired equity.

The favorable factors in this matter are the applicant's family ties to U.S. citizens, his spouse and stepchild, the approval of a petition for alien relative and the absence of a criminal record.

The unfavorable factors in this matter include the applicant's failure to depart the United States after his appeal was dismissed by the BIA, his employment without authorization and his unlawful presence in the United States from March 19, 2002, the date his appeal was dismissed by the BIA until September 26, 2002, the date he was removed from the United States.

The applicant's actions in this matter cannot be condoned. His equity, marriage to a U.S. citizen, gained after a deportation order was issued 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 he 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 Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.