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**U.S. Citizenship
and Immigration
Services**



FILE: [Redacted] Office: ATLANTA, GEORGIA

Date: JUN 03 2004

IN RE: [Redacted]

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 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who was convicted of an aggravated felony and subsequently removed from the United States at government expense in August 1999. 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), in order to reside in the United States with her U.S. citizen parents and child.

The district director determined that the applicant failed to overcome the burden of establishing good moral character, reformation of previous illegal behaviors and an outstanding hardship to a United States citizen. The district director denied the I-212 application accordingly. *Decision of the District Director*, dated October 19, 2001.

On appeal, the applicant's parents state that the applicant is appealing on a humanitarian basis to seek forgiveness and pardon. The applicant's parents indicate that the penalty for birth outside of wedlock in Islamic society is death for both the child and the mother and therefore, they request that the applicant be permitted to reenter the United States. *A Note from the Grieving Parents*, dated November 3, 2001. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

(9) Aliens Previously Removed.-

(A) Certain aliens previously removed.-

....

(ii) [A]ny alien . . . who-

(I) Has been ordered removed under section 240 or any other provision of law . . . 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 the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factors in the application are the hardship imposed on the applicant's child and parents by her inadmissibility to the United States. The record contains a letter from a clinical social worker treating the applicant's child. The mental health professional indicates that the child suffers anxiety as a result of separation from his mother and that his anxiety is manifested in night tremors and the inability to be separated from his grandparents for long durations. *Letter from Sue Ellen Watson, LCSW*, dated October 30, 2001. The AAO notes that the applicant's child originally accompanied his mother to Pakistan when she was removed from the United States. The record reflects that the applicant returned her child to her parents in the United States when a physician in Pakistan indicated that the child was ill owing to the pollution present in Pakistan. As noted by the district director, the applicant and her child are not separated as a result of Government action, but as a result of choices made by the applicant and her parents.

The applicant's parents state that they are fearful that the applicant and her child will be persecuted or killed in Pakistan owing to the illegitimacy of the applicant's child. *A Note from the Grieving Parents*. While their apprehension is regrettable, the record does not evidence a particularized threat to the applicant and her son, both of whom have been present in Pakistan without threat or occurrence of bodily harm.

The unfavorable factors in the instant application include the applicant's criminal history including conviction for an aggravated felony. Other unfavorable factors in the application include the applicant's multiple false claims to United States citizenship, which may require her to additionally seek an approved Waiver of Grounds of Excludability (Form I-601). The AAO notes that an applicant's prior residence in the United States is considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. *See Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978).

The applicant offers no evidence of reformation or rehabilitation from her disregard for the immigration laws of this country. The record contains letters from the applicant and others asserting that the applicant is a good person. The tenor of the applicant's letter, however, is that she is entitled to return to the United States because individuals who have committed crimes worse than hers have been afforded authorization to remain in the United States. *Declaration of Samina Deen*, dated September 3, 2001. The assertions of the applicant amount to no more than hearsay and do not amount to compelling evidence of reformation of character. Moreover, as noted by the district director, no person who at any time has been convicted of an aggravated felony shall be regarded as a person of good moral character under U.S. immigration law.

The applicant has not established that the favorable factors in her application outweigh the unfavorable factors. The district director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). The applicant failed to establish that she warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.