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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: JUN 21 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:

[redacted]

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 (Form I-212) was denied by the Interim District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant is a native and citizen of Slovakia who was found to be inadmissible to the United States 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 obtained a visa for entry into the United States by fraud or willful misrepresentation. On or about February 3, 2003, the applicant was removed from the United States under section 235(b)(1) of the Act. The applicant is a previous H-1B visa holder who 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 resume his employment in the United States.

The interim district director determined that the unfavorable factors present in the application outweighed the favorable factors and denied the Form I-212 application accordingly. *Decision of the Interim District Director*, dated October 9, 2003.

On appeal, counsel asserts that the interim district director abused his discretion and erred in denying the application. *Attachment to Form I-290B*, dated November 10, 2003.

To support these assertions, counsel submits a copy of a letter from the United States Embassy, Slovakia to Senator Orrin Hatch, dated February 13, 2003; a copy and translation of the marriage certificate of the applicant and his spouse; a copy of the English translation of the birth certificate of the applicant's spouse; copies of the passport and visa issued to the applicant's spouse; a document relaying the events of February 3, 2003 according to the applicant; copies of documents relating to the applicant's criminal history; a copy of a written summary of the applicant's professional credentials and education; copies of brochures pertaining to a musical series with which the applicant is involved; reference letters from various sources in support of the applicant including, but not limited to letters from the President of Snow College, the employer of the applicant, and letters from government officials and community and business leaders; a sworn statement of the applicant; a letter from the applicant's spouse, dated October 19, 2003 and copies of newspaper articles and other documents evidencing the applicant's contribution to the community. 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.-
> >
> > > (i) Arriving aliens. – 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.
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> . . . .
>
> (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 include the applicant's considerable contributions to his profession and his community throughout the twelve years that he lawfully resided in the United States with a nonimmigrant employment visa. The record evidences the high opinion held of the applicant by his employers, colleagues and community members. *See Letter from Dr. J. Mark Ammons, Director, Horne School of Music*, dated March 14, 2003. *See also Letter from Dr. Elaine Jorgensen*, dated March 10, 2003. Further, the applicant's employer establishes the need for the services of the applicant in the United States. *Letter from Michael T. Benson, President, Snow College*, dated February 27, 2003. The AAO notes that although counsel asserts that the applicant's presence is required in the United States in order to provide for his spouse, the applicant's spouse is currently present in the United States as a nonimmigrant visitor and as such may relocate to Slovakia to reside with the applicant if necessary. *Appeal to the Administrative Appeals Unit & Request for Additional Time to File Brief*, dated November 10, 2003.

The unfavorable factors in the application include the applicant's fraudulent misrepresentations of his arrest record when applying for a visa and when applying for entry into the United States. The applicant failed to disclose his arrest for Theft on January 9, 1992 in Beaumont, Texas to immigration and consular officers. The AAO notes that misrepresentation of material fact when applying for a visa results in inadmissibility to the United States under section 212(a)(6)(C)(i) of the Act. The AAO notes that the applicant was arrested only once, that he has not been arrested since 1992, demonstrating rehabilitation and reformation of character. The AAO further notes that the criminal case against the applicant was dismissed and did not result in a conviction. *Letter from Becky Garcia, Deputy Clerk, Beaumont, Texas*, dated February 4, 2003.

Another unfavorable factor presented in the application is the fact that, on February 2, 2003, the applicant fled Immigration and Naturalization Service [now Customs and Border Protection] custody at O'Hare International Airport after being told that he was inadmissible and would be removed to Slovakia. The applicant absconded, demonstrating a callous attitude toward violating immigration laws and rendering the applicant a fugitive. The AAO notes that the applicant returned to the airport several hours later and complied with the terms of his removal from the United States, diminishing the impact of his departure. However, the AAO does not agree with the assessment of counsel who contends that the applicant's "honesty and integrity" led him to return to the airport "without incident or any fanfare or negative media publicity." Counsel further states that he is "sure the Legacy INS and [Department of Homeland Security] are greatly relieved that Dr. Ondras was not a hardened criminal who was allowed to escape from the airport into the general population due to the Legacy INS's own negligence and lack of supervision." *Appeal to the Administrative Appeals Unit & Request for Additional Time to File Brief* at 6. The AAO finds the assertions of counsel to be speculative, unfounded and irrelevant to the instant proceedings and clarifies that these particular assertions by counsel were not weighed in favor of the applicant in rendering a decision on this appeal. The fact that the applicant was not prevented from leaving the airport does not excuse the fact that the applicant absconded from custody, as implied by counsel.

The applicant has established that the favorable factors in his application outweigh the unfavorable factors. The interim district director's denial of the I-212 application was thus improper. The appeal will be sustained and the application will be approved. The AAO notes that the applicant requires a recommendation for temporary admittance pursuant to section 212(d)(3) of the Act in order to overcome his grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act.

ORDER: The appeal is sustained and the application is approved.