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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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HY

FILE:



Office: ATHENS, GREECE

Date: OCT 21 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

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 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 Iran who entered the United States as a non-immigrant visitor for pleasure on October 21, 1985, and married a U.S. citizen on August 7, 1987. On July 19, 1988, the applicant was granted conditional resident status based on a Petition for Alien Relative (Form I-130) filed on her behalf. On May 30, 1990, an investigation regarding the validity of the applicant's marriage was initiated. The District Director determined that the applicant and her spouse entered into a marriage for the primary purpose of circumventing the immigration laws of the United States. The applicant was subsequently placed in deportation proceedings and on August 10, 1993, an Immigration Judge affirmed that the applicant was deportable as charged, denied her application for suspension of deportation and granted the applicant's request from voluntary departure, until September 30, 1993. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on August 16, 1999, and she was granted voluntary departure until September 15, 1999. She filed an appeal with the United States Court of Appeals for the Fifth Circuit, which affirmed the BIA's decision on January 19, 2001. The applicant was taken into custody on November 28, 2001, and was subsequently released on an Order of Supervision on December 4, 2001. She was removed from the United States on January 15, 2002. The record reflects that the applicant married a U.S. citizen on July 16, 2002 in Istanbul, Turkey 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 and children.

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 August 30, 2003.

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 states that she has never lied to the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) and that her ex-spouse was not living with her at the time of the investigation. She further states that she has two children residing in the United States and she needs to be with them and her husband. Furthermore she states that it is very difficult to live in Iran since she has not lived there since she was 15 years old and she has no man living with her and no job.

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 Consular Officer, in Istanbul, Turkey, 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 Consular Officer 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.