



U.S. Citizenship  
and Immigration  
Services

H4

[REDACTED]

FILE:

Office: ATHENS, GREECE

Date: SEP 09 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

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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 (Form I-212) 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 Egypt who was ordered removed from the United States by an Immigration Judge on September 19, 1995. The applicant departed from the United States during September 2001 and attempted to reenter on October 23, 2001, but was determined to be inadmissible pursuant to sections 212(a)(6)(B), 212(a)(6)(C)(i), 212(a)(7)(A)(i)(I), 212(a)(9)(A)(ii) and 212(a)(9)(B)(i)(II) of the Act. The applicant married a citizen of the United States on February 14, 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 his spouse and children.

The officer in charge (OIC) determined that the discretionary factors pertaining to the hardship of the applicant's spouse and stepchildren do not outweigh the seriousness of the applicant's lack of respect for the law. *Decision of the Officer in Charge*, dated June 13, 2003. The AAO notes that the Form I-292 Decision page announcing the OIC decision states that the OIC is denying the applicant's Application for Waiver of Ground of Excludability (Form I-601). *Id.* However, as the focus of the discussion and the final determination of the OIC contained therein address the applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), the AAO likewise focuses on the Form I-212 application and arrives at a decision solely regarding appeal of the Form I-212 application.

On appeal, counsel asserts that Citizenship and Immigration Services did not give adequate weight to the hardship that the applicant's spouse and family would suffer if he were barred from the United States. Counsel contends that the applicant's wife submitted a written statement although the decision of the OIC states that she did not submit one. Counsel further indicates that the applicant's spouse appeared at the consulate to testify on the applicant's behalf. *Form I-290B*, dated July 11, 2003.

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.

(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 factor in the application is the hardship imposed on the applicant's spouse and children by the applicant's inadmissibility to the United States.

The AAO notes that the applicant and his wife wed after the applicant was ordered removed from the United States. The Seventh Circuit Court of Appeals held in *Garcia-Lopez v. INS*, 923 F.2d 72 (1991), that less weight is given to equities acquired after a deportation (removal) order has been entered. Furthermore, 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 (removal) proceedings, and with knowledge that the alien might be deported. See *Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992). Hardship to the applicant's wife is thus given diminished weight.

Counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services] failed to notify the applicant that he was ordered removed from the United States and therefore, he and his wife were not aware of his tenuous status in this country. *Memorandum of Law in Support of Appeal of DHS's Denial of Waivers of Inadmissibility*, dated September 8, 2003. The AAO notes that the record fails to provide support for the assertion of the applicant that he was not notified of the date of his hearing before an immigration judge. Further, the AAO notes that the applicant was detained by immigration officers who encountered him when he attempted to enter the United States without inspection in 1995. The AAO finds that based on his detainment in 1995, the information provided to him at that time and the applicant's knowledge that he did not possess documentation of status in the United States, the applicant should have been aware that his status in the United States was uncertain.

The unfavorable factors in the application include the fact that the applicant attempted to enter the United States without inspection in 1995. Further, the applicant failed to reveal his 1995 encounter with immigration officials when he filed the Form I-485 Application to Register Permanent Residence or Adjust Status. Counsel asserts that the applicant, "never knew that he would be scheduled for a hearing, never received a notice for the hearing, and was unaware that he had been ordered deported," but offers no evidence to support this contention beyond the statements of the applicant. On the contrary, counsel provides a copy of a sworn statement given by the applicant before immigration officials on October 31, 2001 in which he states that he was given paperwork when he was released by immigration officials in September 1995, but lost it. *Record of Sworn Statement in Affidavit Form*, dated October 23, 2001. The AAO finds, despite the assertions of counsel, the applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country. *Id.*

The AAO further notes that the applicant accrued unlawful presence in the United States while he was illegally present and triggered unlawful presence provisions under the Act upon departing from the United States pursuant to section 212(a)(9)(B) of the Act and requiring the applicant to seek an approved Waiver of Grounds of Excludability (Form I-601) in addition to the instant application. 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 has not established that the favorable factors in his application outweigh the unfavorable factors. The OIC'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 has failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.