



U.S. Citizenship
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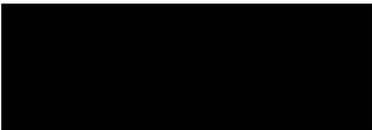
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FILE:  Office: CALIFORNIA SERVICE CENTER Date: DEC 16 2005

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:



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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Fiji who was admitted into the United States as a non-immigrant visitor for pleasure on September 11, 1993, with an authorized period of stay until March 11, 1994. The applicant applied for asylum with the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)). On May 16, 1994, the applicant was interviewed for asylum status and she was subsequently referred to an Immigration Judge for a court hearing. On April 8, 1997, an Immigration Judge granted the applicant voluntary departure until August 15, 1997, in lieu of deportation. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on July 20, 1998, and she was permitted to depart from the United States voluntarily within 30 days from the date of the BIA's order. The applicant filed a petition for review of deportation and an application for stay of deportation with the United States Court of Appeals for the Ninth Circuit, which was denied on November 18, 1999. The applicant was granted voluntary departure until February 10, 2000. The applicant failed to surrender for removal or depart from the United States. The applicant's failure to depart on or prior to February 10, 2000, changed the voluntary departure order to an order of removal. On February 12, 2000, a Warrant of Removal/Deportation (Form I-205) was issued. On May 23, 2003, the applicant was apprehended and on June 3, 2003, she was removed from the United States pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act). The applicant is the beneficiary of an Application for Alien Relative (Form I-130) filed by her U.S. citizen father. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She now 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 and reside with her U.S. citizen parents and children.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. *See Director's Decision* dated October 5, 2004.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens 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 alien 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 alien's reembarkation at a place outside the

United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (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; (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, counsel submits a brief, copies of the applicant's children's birth certificates and social security cards, and copies of her parents' naturalization certificates. In his brief counsel states that the applicant's failure to surrender for removal was not a result of a blatant disregard for the immigration laws. Counsel states that the applicant believed that she had a legal right to remain in the United States despite the fact that her asylum application was denied because her father had filed a Form I-130 on her behalf. In addition, counsel states that the favorable factors in the case outweigh the unfavorable ones. Counsel states that the applicant is the mother of three U.S. citizen children, who would suffer extreme hardship if her application were denied. Furthermore, counsel states that the applicant cannot find employment in Fiji, she relies on the money her father sends her, and does not have any close relatives in Fiji to help her take care of her children. Counsel further states that the applicant has over 150 family members in the United States and her children would be deprived of the benefit of a variety of educational and economic opportunities in the United States. Counsel states that the applicant's father would suffer extreme hardship and mental anguish if the appeal were denied. Finally, counsel states that the applicant is a hard-working person with good moral character, no criminal record, has not received any government assistance in order to support herself or her children, and has filed federal and state income tax returns from 1994 through 2003. Based on the above facts, counsel requests that the applicant's Form I-212 be granted and the applicant be allowed to enter the United States as a legal permanent resident.

Counsel's statements are not persuasive. The applicant was fully aware of her final order of voluntary departure and there is no provision of law that permits an alien to remain in the United States based on a Form I-130 having been filed on their behalf. Although counsel states that the applicant filed tax returns from 1994 through 2003, no documentary evidence has been provided. The tax form submitted for 2001 was filed jointly with her husband and only his income was noted. 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 uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS*, 39 F. 3d 1049 (9th Cir. 1994). No evidence exists that the applicant's children would not be able to adjust to life in Fiji.

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 for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

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 condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

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.*

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. 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.

The AAO finds that the favorable factors in this case are the applicant's family ties to U.S. citizens, her children and parents, an approved petition for alien relative and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's failure to depart the United States after she was granted voluntary departure, her failure to depart after her appeals were dismissed or denied and her voluntary departure order became a final order of deportation, her periods of unauthorized employment and her lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee, supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

The applicant's actions in this matter cannot be condoned. Her equity, U.S. citizen children, gained after she was placed in removal proceedings 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 the applicant 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.