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U.S. Citizenship
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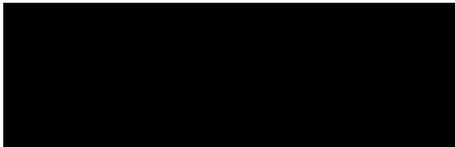
Applicant:



APPLICATION:

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

The applicant is a native and a citizen of Poland who entered the United States on July 11, 1986, as a non-immigrant visitor for pleasure with an authorized period of stay until January 11, 1987. The applicant overstayed his authorized period of stay and on September 24, 1988 he was apprehended by Border Patrol agents at Detroit, Michigan. On September 28, 1988, the applicant was served an Order to Show Cause for a hearing before an Immigration Judge and he was released on a \$1,000 bond. On January 4, 1990, an Immigration Judge denied the applicant's application for asylum and withholding of deportation and granted the applicant voluntary departure until April 4, 1990. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on December 1, 1993. He was granted thirty days to depart the United States voluntarily. The applicant failed to depart from the United States. The applicant's failure to depart on or prior to January 1, 1994, changed the voluntary departure order to an order of deportation. On January 6, 1994, the District Director, Chicago, Illinois issued a Warrant of Deportation (Form I-205). On May 2, 1994, the applicant filed a Motion to Reopen (MTR) with the BIA, which was denied on June 29, 2000. Applications for a stay of deportation filed by the applicant were denied on July 3, 1995, and June 17, 1997. On November 16, 1991, the applicant married a Lawful Permanent Resident (LPR). He is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his now naturalized U.S. citizen spouse. On August 10, 1990, in the Circuit Court of Cook County, State of Illinois, the applicant was convicted of the offense of receiving/possession/selling a stolen vehicle and he was sentenced to two years probation. The record of proceedings reveals that on December 3, 1997, the applicant departed the United States, executing the pending order of deportation. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 his U.S. citizen spouse and child.

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. In addition the District Director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. See *District Director's decision* dated June 12, 1998.

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 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 continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's 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, counsel submits a brief in which he does not dispute the fact that the applicant was ordered deported, or that his appeal was dismissed by the BIA, but asserts that the applicant was not a fugitive since he appeared on numerous occasions before the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). In addition, counsel states that the applicant cooperated with CIS and paid for his ticket to Poland. Counsel states that when the applicant was convicted of a crime involving moral turpitude he was young and under the influence of friends. According to counsel an immigration officer advised the applicant that his crime would not serve as a basis to deny his immigration status and therefore the Form I-130 would be approved. In addition, counsel states that the applicant was assured that he could return to the United States within six months after filing the Form I-212 because the Form I-212 would be granted upon submission. Finally counsel states that section 212(h)(2) of the Act applies in this case and the applicant was not charged with or convicted of any crime aside from the one described in the District Director's decision. He requests that the decision be overturned.

Counsel's assertions are not persuasive. The applicant failed to depart the United States on or before January 1, 1994, a warrant of deportation was issued on January 6, 1994, and a notice to surrender alien completely ready for deportation was issued on February 22, 1994. The applicant failed to surrender for deportation and therefore became a fugitive. The adjudication and approval of Form I-130 deals with two issues: whether the petitioner has standing to file the petition; and whether the beneficiary has the requisite familial relationship to qualify for the classification being sought. Section 212(h)(2) of the Act refers to a waiver of inadmissibility when the Secretary has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status. This is not the issue in this case. The applicant has applied for the Secretary's consent to reapply for admission to the United States. That permission has not been granted. The mere submission of Form I-212 does not guarantee approval of the application. Nothing in the record of proceeding reveals that the applicant was assured that he would be able to return to the United States within six months after the submission of the Form I-212 or that it would be granted upon submission. Finally, based on the applicant's August 10, 1990, conviction the AAO finds that he is clearly inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude.

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 of deportation; the recency of the deportation; the length of legal residence in the U.S.; the applicant's moral character and his respect for law and order; evidence of reformation and rehabilitation; the applicant's family responsibilities; and hardship to if the applicant were not allowed to return to the U.S.

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.*

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 be a condonation of the alien's acts and could encourage others to enter without being admitted to work in the United States unlawfully. *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. Further, 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 proceedings, with knowledge that the alien might be deported. 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. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper.

The applicant in the present matter married his U.S. citizen spouse on November 16, 1991, years after he was placed in deportation proceedings and more that one and one half years after his application for asylum and withholding of deportation was denied. The applicant's spouse should reasonably have been aware of the applicant's immigration violations and the possibility of his being removed at the time of their marriage. He now seeks relief based on that after-acquired equity.

The favorable factors in this matter are the applicant's family ties to U.S. citizens (his spouse and children), the approval of a petition for alien relative and the prospect of general hardship to his family.

The unfavorable factors in this matter include the applicant's overstay after his initial lawful admission, his conviction of a crime involving moral turpitude, his failure to depart the United States after he was granted voluntary departure and after his appeal was dismissed by the BIA, his employment without authorization and his lengthy presence in the United States without authorization. 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. His equity, marriage to a U.S. citizen, gained after he was placed in deportation 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.