



U.S. Citizenship  
and Immigration  
Services



H4

FILE: [Redacted]

Office: HARTFORD, CONNECTICUT

Date: **MAY 19 2005**

IN RE: Applicant: [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: SELF-REPRESENTED

*Administrative Appeals Office*  
*U.S. Citizenship and Immigration Services*  
**PUBLIC COPY**

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 after deportation or removal was denied by the District Director, Boston, Massachusetts and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Macedonia who entered the United States without inspection on June 6, 1985. On the same date the applicant was served an Order to Show Cause for a hearing before an Immigration Judge and on June 11, 1985, he was released on a \$2,000 bond. On August 7, 1985, the applicant applied for asylum. An Immigration Judge denied his applications for asylum and withholding of deportation on May 13, 1988. The Immigration Judge granted the applicant voluntary departure until June 30, 1988. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on September 27, 1993. He was granted thirty days to depart the United States voluntarily. The applicant failed to depart the United States. The applicant's failure to depart on or prior to October 26, 1993, changed the voluntary departure order to an order of deportation. On October 27, 1993, a Warrant of Deportation (Form I-205) was issued. On June 21, 1994, the applicant filed a Motion to Reopen (MTR) his deportation proceedings, which was denied by the BIA on August 1, 1994. A second MTR was filed in August 1995 and the BIA denied it on February 2, 1996. A petition to review the BIA's decisions filed with the United States Court of Appeal for the Second Circuit was denied on October 30, 1996. An application for a stay of deportation filed by the applicant was granted on July 22, 1994. On December 12, 1996, the case was dismissed with prejudice and the stay of deportation was dissolved. The record of proceedings reveals that on December 20, 1996, the applicant departed the United States, executing the pending order of deportation. The record further reveals that a previously filed Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) was denied on February 18, 1988. The applicant reentered the United States in May 1998, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1326. On September 10, 2001, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of the Act. On February 6, 2002, Immigration Judge denied the applicant's requests for withholding of removal under section 241(b)(3) of the Act and under the Convention Against Torture. On March 10, 2002, the applicant was removed from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 children.

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the applicant's Form I-212 accordingly. *See District Director's Decision* dated September 22, 2003.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that signed by the applicant's spouse and not by the applicant. Therefore the AAO will not be sending a copy of the decision to the individual mentioned on the Form G-28, but this office will accept the submitted information.

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 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, with limited exceptions, 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 states that the applicant is married to a U.S. citizen and they have three children born in the United States. In addition counsel states that the applicant's removal has caused extreme hardship to the applicant, his spouse and their children. Furthermore counsel states that the applicant's wife is unable to properly provide for her family because of lack of finances. Counsel submits an affidavit from the applicant's spouse, his stepchild and copies of documentation provided previously with the first Form I-212. In her affidavit the applicant's spouse describes her financial difficulties the hardship she and her children are experiencing because of the applicant's removal and states that she has been under medical treatment due to emotional distress.

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 record reflects that the applicant has the following convictions:

January 11, 1995: Superior Court of the State of Connecticut for two counts of assault in the 3<sup>rd</sup> degree and violation of protective order. He was sentenced to one-year imprisonment for each of the assault convictions and one-year imprisonment for the violation of protective order. All sentences were suspended.

January 28, 1994: Superior Court of the State of Connecticut of assault in the 3<sup>rd</sup> degree. He was sentenced to pay a \$100.00 fine.

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 (7<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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 entered the United States without inspection on June 6, 1985, and married his U.S. citizen spouse on January 31, 1995, years after he was placed in deportation proceedings. The applicant's spouse should reasonably have been aware of the applicant's immigration violation and the possibility of his being removed at the time of their marriage. He now seeks relief based on that after-acquired equity.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his U.S. citizen spouse and children, an approved petition for alien relative and the prospect of general hardship to his family.

The unfavorable factors in this case include the applicant's illegal entry into the United States on June 6, 1985, his illegal reentry subsequent to his December 20, 1996, departure, his criminal record, his removal of March 10, 2002, and his 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. 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.