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U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 14 2006

IN RE:

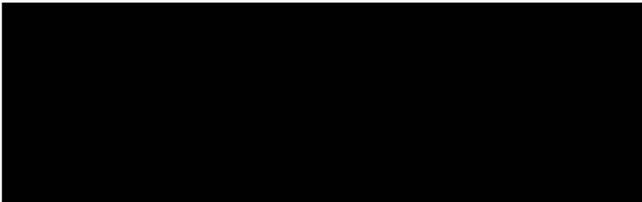
Applicant:



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:



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, Chief
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 sustained and the application approved.

The applicant is a native and citizen of Bangladesh who, on May 20, 2001, applied for admission into the United States at the Los Angeles, California, International Airport. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or other valid entry document. The applicant was interviewed by an asylum officer to determine credible fear of persecution. On June 7, 2001, it was determined that the applicant met the credible fear standard and a Notice to Appear (NTA) for a hearing before an immigration judge was served on him. On April 3, 2002, an immigration judge denied the applicant's application for asylum and withholding of removal and his application for relief under the United Nations Convention Against Torture. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which on September 15, 2003, affirmed, without opinion, the immigration judge's decision. The applicant filed a petition for review of the BIA's decision and a motion for a stay of removal with the United States Court of Appeals for the Ninth Circuit. His motion for a stay of removal was granted on April 6, 2004, pending review of his removal order. On January 10, 2005, the Ninth Circuit Court of Appeals denied the applicant's petition for panel rehearing and the BIA's decision was affirmed. The applicant departed the United States on February 8, 2005, executing the immigration judge's removal order. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and of a Petition for Alien Fiancé (Form I-129F) filed by his U.S. citizen spouse. He is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 United States and reside with his U.S. citizen spouse.

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 August 16, 2005.

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

(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 five 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.

. . . .

(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 contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, counsel submits a brief in which he states that the applicant departed the United States in less than 30 days after his appeal to the Ninth Circuit was denied. In addition, counsel states that the applicant has no criminal record and has shown respect for the laws of the United States by departing voluntarily after his appeal was dismissed. Furthermore, counsel states that the applicant and his spouse will suffer hardship being separated for a long period of time. Finally, counsel states that based on the above factors approval of the Form I-212 is warranted.

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.

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. 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 October 10, 2003, over two years after he was placed in removal proceedings. The applicant's spouse should reasonably have been aware at the time of their marriage of the possibility of his being removed. He now seeks relief based on that after-acquired equity. Therefore, hardship to his spouse will not be accorded great weight.

In his decision, the Director determined that the applicant did not establish any favorable factors to offset his disregard for the laws of the United States and denied the application accordingly.

The AAO does not find that the applicant has shown a disregard for the laws of the United States. As noted above, the applicant was interviewed by an asylum officer and met the credible fear standard. The applicant had the right to file an asylum application, and although it was subsequently denied, he was entitled to exhaust all means available to him by law in an effort to legalize his status in the United States. His various applications and appeals conferred on him a status that allowed him to remain in the United States while they were pending. The Ninth Circuit Court of Appeals made a final decision on his case on January 10, 2005, and the applicant departed from the United States on February 8, 2005.

The AAO finds that the favorable factors in this case are the applicant's family ties to a U.S. citizen, his spouse, an approved Form I-130, the prospect of general hardship to his family, and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's periods of unauthorized presence in the United States.

While the applicant's periods of unauthorized presence cannot be condoned, the AAO finds that given all the circumstances in the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.