



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 20 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: SELF-REPRESENTED

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 dismissed.

The applicant is a native of the former U.S.S.R. and a citizen of Armenia who was admitted into the United States as a non-immigrant visitor for pleasure on September 23, 1993, with an authorized period of stay until April 22, 1994. In February of 1994 the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589) with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). On June 21, 1994, the applicant was interviewed for asylum status. On November 17, 1994, her application was denied and an Order to Show Cause (OSC) for a hearing before an immigration judge was served on her on December 1, 1994. On February 15, 1996, an immigration judge found the applicant removable pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act), for having remained in the United States longer than permitted and granted her voluntary departure until May 15, 1996, in lieu of deportation. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on June 27, 1997, 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 two Motions to Reopen (MTR) the BIA decision, one under the Convention Against Torture (CAT) and one based on ineffective assistance of counsel. Both MTRs were denied on June 10, 2002. The applicant filed a petition for review of the order of the BIA with the United States Court of Appeals for the Ninth Circuit, which was denied on November 4, 2003. The record reflects that an Immigrant Petition for Alien Worker (Form I-140) filed on behalf of the applicant was denied on September 10, 2002, and an appeal was dismissed by the AAO on March 28, 2003. On May 6, 2004, the BIA denied another motion to reopen. Consequently, on May 26, 2004, the applicant was deported from the United States. The applicant is the beneficiary of an Application for Alien Relative (Form I-130) filed by her U.S. citizen spouse. 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 spouse, parents and step-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 June 20, 2005.

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, the applicant submits a letter from her mother and a letter from her spouse's psychiatrist. The applicant's mother, in her letter, states that she has been diagnosed with severe depression since 1985, which led to nervous breakdowns. She further states that the applicant took care of her when she was paralyzed. In addition, she states that the applicant's father had a stroke and is wheelchair bound. Additionally, she states that the applicant's spouse is extremely depressed and she requests that the applicant be permitted to return to the United States in order to take care of her and her husband. The applicant's spouse's psychiatrist states in his letter that he has been monitoring the patient since time of the death of his first wife in November of 2000. In addition, he states that the applicant's spouse is suffering from a disabling major depression disorder and he is being treated with supporting psychotherapy and medication (Prozac). The psychiatrist states that it is his opinion that the applicant should be allowed to reunite with her family in order to restore her family's health.

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 be a

condonation of the alien's acts and could encourage others to enter without being admitted and work in the United States 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. 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 her U.S. citizen spouse on August 29, 2003, approximately nine years after she was placed in deportation proceedings. The applicant's spouse should reasonably have been aware at the time of their marriage of the possibility of her being deported. She now seeks relief based on that after-acquired equity. Therefore, hardship to her spouse will not be accorded great weight.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, her U.S. citizen spouse, parents and step-children, an approved Form I-130, and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's overstay of her authorized period of stay, her failure to depart the United States after the BIA dismissed her appeal and after the Ninth Circuit Court of Appeal denied her petition for review, her periods of unauthorized presence and her long periods of unauthorized employment in the United States. 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, marriage to a U.S. citizen, gained after she was placed in deportation proceedings, and after the BIA dismissed her appeal, 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.