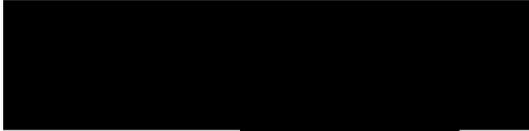


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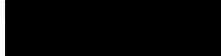


**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: NEWARK

Date:

MAY 10 2006

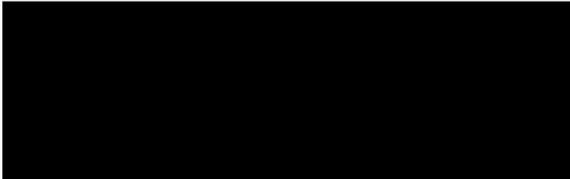
IN RE:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Newark District Office, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of Greece who, on June 28, 1976, entered the United States as a crewman. On June 28, 1976, the applicant deserted his vessel and was apprehended by immigration officers at the New Orleans airport on June 29, 1976. The applicant's landing permit was revoked and he was served with a Notice of Revocation and Penalty (Form I-99). The Form I-99 informed the applicant that his landing permit had been revoked, he was being deported and he could not lawfully enter the United States unless, prior to his embarkation at a place outside the United States he received consent to reapply for admission. Consequently, on June 29, 1976, the applicant was deported from the United States aboard the "S/T Anemos." On October 12, 1977, the applicant attempted to enter the United States. The applicant was refused admission as a crewman and was detained on board his vessel. On October 18, 1977, the applicant deserted the vessel and entered the United States without a lawful admission or parole and without permission to reapply for admission. On November 10, 1999, the applicant was issued a warrant of removal and ordered to appear for removal on January 11, 2000. The applicant is, therefore, inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140) filed on his behalf. 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 remain in the United States and reside with his U.S. citizen spouse and two children.

The district director determined that the applicant was an alien who required permission to reapply for admission into the United States. The district director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The district director then denied the Form I-212 accordingly. See *Director's Decision* dated October 29, 2001. On July 30, 2002, the AAO affirmed the district director's decision on appeal. See *AAO's Decision*, dated July 30, 2002.

On August 30, 2002, the applicant filed a motion to reconsider. Counsel asserts that the AAO avoided, ignored and otherwise misinterpreted the applicant's immigration history and erroneously applied the relevant laws and regulations. See *Applicant's Brief*, dated August 28, 2002.

Section 212(a)(9) 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.
- (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 who 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 on a 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 Secretary has consented to the alien's reapplying for admission.

On appeal, counsel asserts that the applicant's spouse is now a naturalized U.S. citizen and that the applicant made every effort to legalize himself and was known to the U.S. government during the more than 20 years that he resided in the United States. Counsel contends that the applicant's time in the United States equals 20 years of rehabilitation and not violation of the immigration laws. Counsel states that the applicant did not remain within the United States unlawfully ever since he absconded from his vessel in 1977. Counsel asserts the applicant left the United States in 1982 to serve in the Greek military and thereafter married a U.S. citizen in 1985, and applied for a visa at the U.S. Consulate in Athens, Greece in 1990.

The applicant has previously indicated in oral testimony and through information provided on applications, that his last entry into the United States occurred in 1982 and that he entered without inspection at that time. Counsel argues that by leaving the United States in 1982, the applicant alleviated his negative factors. Whether the applicant left the United States in 1982 does not alleviate the applicant's negative factors. The record reflects that the applicant entered the United States in 1977 after being deported, denied entry and detained aboard a vessel. The applicant was aware that he was not permitted to enter the United States or the leave the vessel and yet he absconded from the vessel and then resided unlawfully in the United States until at least 1982. The record of proceedings does not indicate that the applicant applied for a visa through the U.S. Consulate in Athens, Greece in 1990, as claimed by counsel. The record reflects that the applicant entered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to, March 5, 1984, the date on which he married [REDACTED], his U.S. citizen ex-wife. Furthermore, the record reflects that, despite the fact that [REDACTED] and the applicant had not resided together since 1985, on March 16, 1989, the applicant's U.S. citizen wife [REDACTED] filed a Petition for Alien Relative (Form I-130), which was approved and forwarded to the U.S. Consulate in Toronto, Canada, on June 5, 1989. *See Divorce Decree*, dated June 16, 1999, *Notice of Approval of Alien Relative Petition*, dated June 5, 1989. The record reflects that the applicant never processed his immigrant visa through a U.S. Consulate abroad or filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. Therefore, the record does not support counsel's assertions that the applicant was known to the U.S. government during his periods of unlawful presence, or that he was legally admitted to the United States in 1990.

On April 17, 1986, the applicant was convicted of simple assault, disorderly conduct and resisting an officer, and sentenced to 30 days in jail suspended and one year of probation in New Jersey Municipal Court. On May 27, 1987, the applicant pled guilty to the charge of aggravated assault in New Jersey Superior Court. On May

31, 1987, the applicant was convicted of simple assault and sentenced to 4 years of probation in New Jersey Superior Court.

On June 14, 1999, the applicant divorced [REDACTED] his current wife, [REDACTED] on June 22, 1999. The applicant and [REDACTED] have a U.S. citizen son who was born June 20, 1991 and a U.S. citizen daughter who was born July 22, 1995. On July 28, 1998, the applicant filed the Form I-485, based on the approved Form I-140.

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 7th Circuit Court of Appeals 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 AAO finds that the above-cited precedent legal decisions establish the general principle that "after-acquired equities" are accorded less weight for purposes of assessing favorable equities in the exercise of

discretion.

The favorable factors in this matter are the applicant's family ties to a U.S. citizen spouse and two U.S. citizen children and the approval of an immigrant petition for alien worker.

The AAO finds that the unfavorable factors in this case include the applicant's reentry into the United States after he was deported and informed that he was required to obtain consent for permission to reapply for admission, the applicant's illegal entry into the United States after a prior deportation and while he had been informed that he was to remain detained aboard his vessel, conviction of multiple crimes, extended unlawful presence and unauthorized employment in the United States and illegally obtained work experience in the United States, without which he would not be eligible for the immigrant petition for alien worker.

The applicant in the instant case not only has multiple immigration violations but also has convictions for multiple crimes. Additionally, the applicant's eligibility for the immigrant visa is based solely on work experience he gained while disregarding and abusing the laws of the United States. The applicant's actions in these matters cannot be condoned. Moreover, the AAO finds that the birth of the applicant's son and daughter and the applicant's marriage occurred after a deportation order was issued against the applicant in 1976. The AAO finds that these factors are "after-acquired equities" and that any favorable weight derived from the applicant's marriage, son or daughter is accorded diminished weight. The totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the laws of the United States, and that the favorable factors in the present matter are outweighed by the unfavorable factors.

Moreover, the AAO finds that the applicant is inadmissible pursuant to section 212(a)(9)(C)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(II). Section 212(a)(9) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

- (1) the alien's having been battered or subjected to extreme cruelty; and
- (2) the alien's--
 - (A) removal;
 - (B) departure from the United States;
 - (C) reentry or reentries into the United States; or
 - (D) attempted reentry into the United States.

The record reflects that, on June 29, 1976, the applicant was deported from the United States. The record also reflects that, on October 12, 1977, the applicant entered the United States without a lawful admission or parole and without permission to reapply for admission. Therefore, the applicant is clearly inadmissible under section 212(a)(9)(C)(i)(II) of the Act. The record reflects further that the applicant also entered the United States on September 6, 1998 by presenting an advance parole based on the Form I-485. Therefore, the applicant's last departure from the United States occurred no earlier than August 11, 1998, the date on which the advance parole was issued.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless more than 10 years have elapsed since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago *and* that CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred no earlier than August 11, 1998, less than ten years ago. He is currently statutorily ineligible to apply for permission to reapply for admission.

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. The applicant in the instant case does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Moreover, 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 motion will be dismissed.

ORDER: The motion is dismissed and the previous decisions of the District Director and the AAO are affirmed.