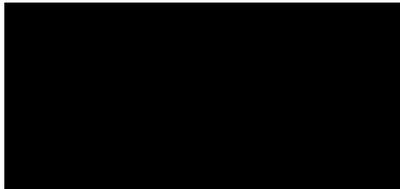


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HY

FILE:



Office: CHICAGO, ILLINOIS

Date: **NOV 17 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 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 citizen of Poland who entered the United States as a nonimmigrant visitor for pleasure on December 13, 1985. On July 20, 1989, the applicant filed a Request for Asylum in the United States (Form I-589) with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). The applicant was interviewed for asylum status and his application was subsequently denied on October 5, 1994. On October 6, 1994, an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was issued. On August 7, 1995, an immigration judge found the applicant deportable pursuant to section 241(a)(1)(C)(i) of the Immigration and Nationality Act (the Act), for having remained in the United States longer than permitted and granted him voluntary departure until August 7, 1996, in lieu of deportation. The applicant failed to surrender for removal or depart from the United States. The applicant's failure to depart on or prior to August 7, 1996, changed the voluntary departure order to an order of deportation. On August 27, 1996, a request for extension of his voluntary departure order was denied and on May 16, 1997, a Warrant of Deportation (Form I-205) was issued. Consequently, on June 9, 1997, the applicant was deported to Poland. The applicant is inadmissible pursuant to 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 to reside with his Lawful Permanent Resident (LPR) spouse and adult children.

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones and denied the Form I-212 accordingly. *See District Director's Decision* dated June 9, 2004. A previously submitted Form I-212 was denied on September 8, 1999, by the District Director, Chicago, Illinois, and a subsequent appeal was dismissed by the AAO on February 9, 2000.

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 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 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 in 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 deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, filed by the applicant's spouse, she states that numerous positive factors were not considered in the applicant's case. The applicant's spouse submits an affidavit, a letter from her daughter, letters of recommendation regarding the applicant's good moral character, a police clearance from Poland and letters regarding her own employment. In her letter, the applicant's spouse states that the applicant is the beneficiary of an immigrant petition, his entire family have been LPR's since 1993, he has no criminal record, his family responsibilities are within the United States, he is not inadmissible under any other section of the law, and the family is suffering because of their separation from him. In addition, the applicant's spouse states that she and the applicant have been married since 1978, and the only time they were separated was caused by her husband's deportation. In her letter, the applicant's daughter states that she had to stop attending college due to financial reasons and she needs the applicant's presence in order to continue her education.

The AAO notes that the record of proceedings does not reflect that the applicant is the beneficiary of an approved immigrant petition as stated by the applicant's spouse. The record of proceeding contains a pending Petition for Alien Relative (Form I-130) filed on behalf of the applicant. In addition, the AAO notes that although the applicant's spouse states that she has been married to the applicant since 1978 and only his deportation separated them, the record of proceeding contains a divorce decree issued on December 17, 1991. The applicant remarried his ex-spouse on March 15, 1995.

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 (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 LPR spouse on March 15, 1995, approximately six months after he was placed in deportation proceedings. The applicant's spouse should reasonably have been aware, at the time of their marriage, of the applicant's immigration violations and 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.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his LPR spouse and his adult children, the letters of recommendation and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's overstay after his initial lawful admission, his failure to depart the United States after he was granted voluntary departure and after his voluntary departure order became a final order of deportation, 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 an LPR, 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 eligibility 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.