



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



H4

AUG 28 2007

FILE:



Office: VERMONT SERVICE CENTER

Date:

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) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:



PHOTOCOPY

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 after removal was denied by the Director, Vermont 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 Pakistan who entered the United States without inspection on April 25, 1993. On December 12, 1994, the applicant filed a Request for Asylum in the United States (Form I-589). On May 9, 1995, an Order to Show Cause and Notice of Hearing (Form I-221) was issued against the applicant. On June 14, 1996, the applicant married [REDACTED] a naturalized United States citizen, in New York. On October 9, 1996, an immigration judge ordered the applicant deported from the United States. On October 16, 1996, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On or about February 3, 1997, the applicant filed a motion to reopen the immigration judge's decision. On February 7, 1997, an immigration judge denied the motion to reopen. The applicant filed another motion to reopen, which was denied by the immigration judge on May 2, 1997. On June 16, 1997, the applicant filed an appeal of the immigration judge's decision with the Board of Immigration Appeals (BIA). On October 7, 1997, a notice of intent to deny the applicant's Form I-130 was sent to the applicant. On January 29, 1998, the Director denied the applicant's Form I-130. On February 13, 1998, the applicant filed an appeal on the Director's decision to the BIA; however, on May 13, 1998, the Director approved the applicant's Form I-130. On June 2, 1999, the BIA dismissed the applicant's appeal. On July 12, 1999, the applicant filed a motion to reopen the BIA's decision, which the BIA denied on January 30, 2003. On February 28, 2005, the applicant departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He now seeks permission to reapply for admission into the United States, in order to reside with his United States citizen wife.

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *Director's Decision*, dated July 28, 2006.

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 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, the applicant, through counsel, asserts that the Director abused his discretion in denying the applicant's Form I-212. *Brief*, page 1, filed August 18, 2006. Counsel contends that the applicant did not present a false document (i.e., the applicant's first wife's death certificate) in order to gain an immigration benefit, since the applicant was not aware that the document was fraudulent. *Id.* The applicant states he made an "unintentional mistake" by submitting the death certificate provided by his father. *Statement by the applicant*, filed March 31, 2006. The AAO notes that since the Director approved the applicant's Form I-130, the issue of whether the applicant's first wife's death certificate was fraudulent is irrelevant. Counsel claims that some of the applicant's favorable factors include: "1) the applicant's large family lawfully residing in the United States, 2) the applicant's clean criminal record, 3) the extreme hardship to the applicant's U.S. citizen spouse, as evidenced by a medical report prepared by [REDACTED], 4) the applicant's voluntarily leaving the United States after exhausting all appeals relating to his deportation order." *Brief*, page 3, *supra*. The AAO notes that no documentation was submitted regarding whether or not the applicant has any family in the United States, besides his wife and her family. The applicant's father-in-law states his daughter is "very depressed and lonely...[s]he is torn between being here for [them], her family and being with her husband...she is having a hard time concentrating, is under a great deal of stress and seems absent minded." *Letter from* [REDACTED], filed March 31, 2006. The applicant's brother-in-law states the applicant's wife is "having a very difficult time coping with her separation from her husband. She is constantly upset and is always talking about being together with [the applicant] and about all the plans they had made for their future...She is also torn apart because of [their] father's health...[The applicant and his wife] are good people who are suffering unnecessarily." *Letter from* [REDACTED], filed March 31, 2006. The applicant's wife states the separation from the applicant "is causing a huge physical, emotional and mental strain on both of [them]. As a result, [she has] been losing sleep, lost weight and [is] having a hard time focusing at work...[She] is in close proximity to [her] family who are very dear to [her]. With the current situation, [she is] torn apart emotionally in having to make a choice between [her] husband and [her] family...[Her] father is not in good

health.” *Letter from [REDACTED] rdi*, filed March 31, 2006. [REDACTED] diagnosed the applicants’ wife with Adjustment Disorder with Mixed Anxiety and Depressed Mood. *Psychological Evaluation by [REDACTED] P.C.*, page 3, dated March 30, 2006. [REDACTED] the applicant’s adjustment disorder with mixed anxiety and depressed mood is “a direct result of being separated from her husband.” *Id.* Counsel states that the Director incorrectly cited *Garcia-Lopez v. INS*, 923 F.2d 72 (7<sup>th</sup> Cir. 1991), because the case is from the Seventh Circuit Court of Appeals (Seventh Circuit) and “is thus not entitled to precedential values in the 2<sup>nd</sup> Circuit, the jurisdiction in which this matter arises.” *Brief*, page 3, *supra*. The AAO notes that the Seventh Circuit is not the only Circuit, which discusses the diminished weight given to after-acquired equities. Further, counsel cited no case law that establishes an after-acquired equity should not be given less weight.

In *Garcia-Lopez v. INS*, *supra*, the Seventh Circuit reviewed a BIA denial of an alien’s request for discretionary voluntary departure relief. The Seventh Circuit found that the BIA’s denial rested on discretionary grounds, and that the BIA had weighed all of the favorable and unfavorable factors and stated the reasons for its denial of relief. The Seventh Circuit affirmed the general principle that less weight may be accorded to equities acquired after an order of deportation is issued, and the Seventh Circuit concluded that the BIA had not abused or exercised its discretion in an arbitrary or capricious manner.

In *Bothyo v. Moyer*, 772 F.2d 353, 357 (7<sup>th</sup> Cir. 1985), the Seventh Circuit reviewed a discretionary stay of deportation case that weighed and balanced favorable and unfavorable factors. The Seventh Circuit stated that an alien’s marriage to a lawful permanent resident did not necessitate the granting of a stay of deportation because the marriage occurred after deportation proceedings had commenced and after an Order to Show Cause had been issued against the alien. The Seventh Circuit then affirmed the general principle that an “after-acquired equity” need not be accorded great weight by a district director in his or her consideration of discretionary weight.

In *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1006 (9<sup>th</sup> Cir. 1980), the Ninth Circuit Court of Appeals (Ninth Circuit) reviewed a discretionary suspension of deportation case. The Ninth Circuit affirmed the principle that post-deportation equities are entitled to less weight in determining hardship. In doing so, the Ninth Circuit referred to the 1980 decision, *Wang v. INS*, 622 F.2d 1341, 1346 (9<sup>th</sup> Cir. 1980) (overruled on unrelated grounds). In *Wang*, the alien sought discretionary relief and a finding of extreme hardship through a motion to reopen deportation proceedings. The Ninth Circuit held in *Wang*, that “[e]quities arising when the alien knows he is in this country illegally, e.g. after a deportation order is issued, are entitled to less weight than equities arising when the alien is legally in this country.”

In *Ghassan v. INS*, 972 F.2d 631, 634-35 (5<sup>th</sup> Cir. 1992), the Fifth Circuit Court of Appeals (Fifth Circuit) reviewed a section 212(c) waiver of deportation discretionary relief case that involved the balancing of favorable and unfavorable factors. The Fifth Circuit found no abuse of discretion in the BIA’s weighing of equitable factors against unfavorable factors in the alien’s case, and the Fifth Circuit affirmed the principle that as an equity factor, it is not an abuse of discretion to accord diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien spouse’s possible deportation.

The applicant in the present matter married his naturalized United States citizen on June 14, 1996, a year 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 him being removed. He now seeks relief based on that after-acquired equity. Therefore, hardship to his spouse will be accorded appropriate weight.

The AAO notes that the applicant's wife is having psychological problems by being separated from the applicant. Additionally, the applicant and his wife would like to start a family, which cannot happen while the applicant and his wife are separated. Furthermore, the applicant's wife is employed as a Pharmacist in New Jersey, and if she relocates to Canada, she will have to become recertified in Canada.

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 AAO will consider the hardship to the applicant's spouse, but it will be just one of the determining factors.

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.*

The AAO finds that the favorable factors in this case are the applicant's family ties to a United State citizen, his wife, general hardship she may experience, the approval of a petition for alien relative, and no criminal record. The AAO notes that the applicant's marriage to his wife occurred after he was placed in deportation proceedings and is an after-acquired equity. As an after-acquired equity this factor will be given less weight.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, and his periods of unauthorized presence and employment.

While the applicant's actions cannot be condoned, the AAO finds that given all the circumstances of 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.