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U.S. Citizenship
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JUL 13 2007

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: [REDACTED]

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who, on October 22 1991, applied for admission to the United States at the New York City, New York Port of Entry. The applicant presented a photo-substituted passport containing a counterfeit admission stamp reflecting an A# that belonged to another individual admitted as a lawful permanent resident. Immigration officers determined that the applicant was inadmissible pursuant to sections 212(a)(6)(C)(i), 212(a)(7)(A)(i)(I) and 212(a)(7)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i), 1182(a)(7)(A)(i)(I) and 1182(a)(7)(B), as an alien who attempted to enter the United States by fraud, an immigrant not in possession of valid documentation and a nonimmigrant who is not in possession of valid documentation, and apprehended the applicant. Upon further questioning, the applicant stated that he was persecuted in India and that he wanted to seek asylum in the United States. The applicant's inspection was deferred and he was advised to complete an Application for Asylum or Withholding of Removal (Form I-589). On November 1, 1991, the applicant appeared for deferred inspection and was paroled for the purpose of applying for asylum. On January 20, 1993, the applicant filed the Form I-589. On November 4, 1999, the applicant's Form I-589 was referred to an immigration judge and he was placed into proceedings. On November 5, 2001, the applicant married his wife, [REDACTED]. On January 4, 2002, the immigration judge denied the applicant's applications for asylum, withholding of removal and convention against torture. The immigration judge granted the applicant 60 days of voluntary departure. The applicant failed to surrender for removal or depart from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On December 30, 2002, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which remains un-adjudicated. On October 27, 2003, the BIA dismissed the applicant's appeal and granted the applicant 30 days of voluntary departure. The applicant failed to surrender for removal or depart from the United States. The applicant filed an appeal with the Ninth Circuit Court of Appeals (Ninth Circuit). On December 13, 2004, the Ninth Circuit dismissed the applicant's appeal. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On January 26, 2005, the applicant filed a motion to reopen with the BIA. On February 25, 2005, a warrant for the applicant's removal was issued. On March 4, 2005, the BIA denied the applicant's motion to reopen. On March 4, 2005, the applicant was removed from the United States and returned to India, where he has since resided. On October 28, 2005, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and 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 children.

The director determined that the applicant had failed to submit evidence that an immigrant visa petition had been filed and approved on his behalf and that the unfavorable factors in the applicant's case outweighed the favorable factors. The director denied the Form I-212 accordingly. *See Director's Decision* dated July 13, 2006.

On appeal, the applicant asserts that he is submitting evidence that an immigrant visa petition has been filed on his behalf and had only recently been scheduled for an interview. *See Form I-290B*, submitted August 15, 2006. The Form I-290B indicated that the applicant would submit a separate brief or evidence on appeal within 60 days. At no time did the applicant forward a brief and/or additional evidence to support the appeal.

The record is, therefore, considered complete. The entire record was reviewed in rendering a decision in this case.

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.
- (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 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.

The record of proceedings indicates that the applicant was paroled into the United States for the purpose of applying for asylum and, when granted voluntary departure, failed to voluntarily depart the United States. The voluntary departure became a final order of removal with which the applicant failed to comply until 2005. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and, therefore, must receive permission to reapply for admission.

The record reflects that [REDACTED] is a native of India who became a lawful permanent resident in 2000 and a naturalized U.S. citizen in 2005. The applicant and [REDACTED] have a six-year old son and a four-year old son who are U.S. citizens by birth. The applicant and [REDACTED] are in their 30's.

On appeal, the applicant asserts that his wife has filed an immigrant visa petition on his behalf. The applicant submits an interview notice indicating that an interview in regard to the Form I-130 was scheduled for August 24, 2006. The record reflects that the Form I-130 remains un-adjudicated and pending.

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 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 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-Munoz 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 U.S. citizen spouse, two U.S. citizen children, and a pending immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's failure to comply with an order of voluntary departure, his failure to comply with an order of removal, his removal from the United States, and his inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, as an alien who attempted to enter the United States by fraud in 1991.

The applicant in the instant case has multiple immigration violations. The AAO finds that the applicant's marriage, birth of his children, and the pending immigrant petition occurred after the applicant was placed into proceedings. The AAO finds these factors to be "after-acquired equities" and that any favorable weight derived from the applicant's marriage, birth of his children, or his pending immigrant visa petition must be 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he 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.