



U.S. Citizenship  
and Immigration  
Services

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H4

[REDACTED]

FILE:

Office: VERMONT SERVICE CENTER

Date: MAR 12 2007

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:

[REDACTED]

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 Director, Vermont 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 Lebanon who, on May 11, 1986, was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past his authorized stay, which expired on November 10, 1986. In 1991, the applicant was granted Temporary Protected Status (TPS) for a period of one year. In 1992, the applicant's TPS was extended for an additional year. On May 16, 1994, the applicant filed an Application for Asylum or Withholding of Removal (Form I-589). On November 22, 1995, the applicant was placed into immigration proceedings. On June 11, 1996, the immigration judge denied the applicant's applications for asylum and withholding of removal and granted the applicant voluntary departure until December 11, 1996. The applicant appealed to the Board of Immigration Appeals (BIA). On August 18, 1998, the BIA dismissed the applicant's appeal and granted him 30 days of voluntary departure. 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 September 21, 1998, a warrant of removal was issued informing the applicant that he should present himself for removal from the United States on November 3, 1998. The applicant failed to present himself for removal or to depart the United States and has since remained in the United States. On July 6, 1999, the applicant married his spouse, [REDACTED]. On August 30, 1999, the Third Circuit Court of Appeals (3<sup>rd</sup> Circuit) dismissed the applicant's appeal for being untimely filed. On September 23, 1999, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On October 29, 1999, the applicant filed a motion to reopen. On January 7, 2000, the motion to reopen was dismissed. On March 29, 2000, the Form I-130 was approved. On November 21, 2002, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant 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.

The Director determined 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 June 8, 2005.

On appeal, counsel contends that the applicant's wife would suffer extreme hardship should he not be allowed to remain in the United States. *See Applicant's Brief*, dated August 2, 2005. In support of his contentions, counsel submits only the referenced brief. 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.-

....

(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 . . .

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 remained in the United States past his authorized stay as a nonimmigrant visitor 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. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act and, therefore, must receive permission to reapply for admission.

The record reflects that [REDACTED] is a native of Iraq who became a lawful permanent resident in 1992 and a naturalized U.S. citizen in 1999. Counsel asserts that the applicant has three U.S.-born children from a previous marriage. However, the Form I-130 indicates that at least two of these children were born in Lebanon and there is no evidence in the record to confirm that they have any legal status in the United States. On appeal, counsel asserts that [REDACTED] would suffer extreme hardship if the applicant were denied admission to the United States because she is unemployed and he is her sole source of financial support, it would be virtually impossible for the applicant to find employment in Lebanon to support himself and his wife due to his medical conditions, [REDACTED] has no ties to Lebanon and adaptation to a new country, culture and society would be extremely difficult, and it would cause her extreme emotional and psychological hardship to leave the United States. Counsel asserts that separating the applicant and [REDACTED] would cause them extreme loneliness and depression because they share a solid and deep relationship and have not been apart since July 1999. Counsel asserts that the applicant's treatment and care would be interrupted and that he would not receive the same level of care that he receives in the United States if he is returned to Lebanon. Finally, counsel asserts that the economic situation in Lebanon is very bad and unemployment is extremely high. In support of these contentions, a medical letter, dated June 23, 2003, was submitted stating that the applicant had been under the doctor's care since September 8, 2002. The letter indicates that the applicant suffered from abdominal aneurism for which he underwent surgery. The medical letter also states the applicant has a history of diabetes, coronary artery disease and congestive heart failure. The medical letter states the applicant underwent an angioplasty for a heart attack. Finally, the medical letter states that the applicant is on numerous medications and needs constant medical check ups. The applicant also submitted a March 2002 Social Security Administration (SSA) Notice of Award, indicating that the applicant had been awarded an income of \$772.40 per month based on his disability. The record reflects that the applicant was employed at least from August 1988 until September 1999 and, apart from counsel's claim that the applicant's health would prevent him from obtaining employment in Lebanon, there is no evidence in the record that demonstrates that the applicant is unable to perform work duties or daily activities due to a physical or mental illness. There is no evidence in the record that establishes that the applicant would be unable to receive sufficient treatment for his medical conditions in Lebanon or be unable to find sufficient employment. The record reflects that [REDACTED] was employed at least from July 1992 until September 1999 and there is no evidence in the record that establishes [REDACTED] would be unable to resume employment due to a mental or physical illness which renders her unable to perform work duties or daily activities.

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. *Supra*.

*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 7<sup>th</sup> Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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 and an approved Form I-130.

The AAO finds that the unfavorable factors in this case include the applicant's extended unauthorized residence and employment in the United States, failure to depart the United States under an order of voluntary departure and non-compliance with a 1998 order of removal.

The applicant in the instant case has multiple immigration violations. The applicant's actions in this matter cannot be condoned. Moreover, the AAO finds that the applicant's marriage and approval of the Form I-130 occurred after the applicant was placed into immigration proceedings, failed to comply with an order of removal and a warrant of removal was issued against him. Accordingly, these favorable factors are "after-acquired equities" and the AAO accords them 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 that 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.