

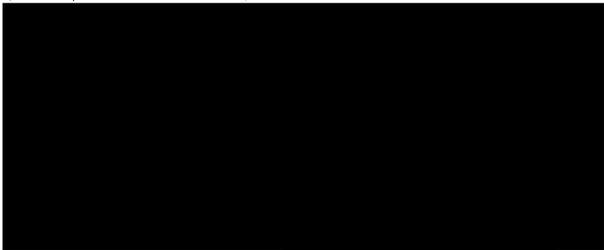
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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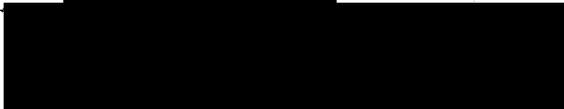
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: MAR 16 2007

IN RE:



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:



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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Romania who was admitted into the United States on August 6, 1995 in B-1 visitor status. The applicant remained in the United States after the expiration date of his Form I-94. The applicant filed an application for asylum which was referred to the immigration court. His application was denied by the immigration judge (IJ) on April 24, 1998. The applicant was granted voluntary departure, with an alternate order of deportation, until May 25, 1998. The applicant filed an appeal with the Board of Immigration Appeals (BIA) and the BIA upheld the IJ's decision on May 23, 2002. The BIA granted the applicant voluntary departure for a period of 30 days from the date of its decision. The applicant remained in the United States, and his deportation order took effect. On December 11, 2003, the applicant was personally served with a Notice to Appear at the Cleveland, Ohio immigration office on January 15, 2004 in order to be removed to Romania. The applicant failed to appear. He married his U.S. citizen spouse on January 9, 2004. The applicant self-deported to Canada on January 10, 2004. Therefore, the applicant is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II). He now 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 reside in the United States with his U.S. citizen spouse.

The district director determined that the evidence submitted with the application does not warrant favorable discretion and the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) was denied accordingly. *Director's Decision* dated July 13, 2006.

On appeal, counsel states that the denial decision is clearly erroneous. *Form I-290B*, dated September 26, 2005. Counsel also asserts that the applicant's spouse would suffer extreme hardship if she relocates to Romania or if she remains in the United States without her spouse. *Brief in Support of Appeal*, at 1, dated September 7, 2006.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 aliens' reembarkation at a place outside the

United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

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.*

Counsel asserts that the applicant's spouse will suffer extreme hardship if he is not granted permission to reapply for admission. In regard to hardship due to separation from the applicant, the record includes statements from the applicant's spouse and her family and friends which reflect that she has had emotional difficulty since the applicant departed the United States. The applicant's spouse states that she is unemployed, receives unemployment and she financially relies on the applicant. *Applicant's Spouse's Statement*, at 1, dated August 29, 2006. There is however, no evidence in the record to establish that she is incapable of working. The record includes a shut-off notice from her power company and proof of unemployment compensation. The record includes a doctor's note that indicates that she saw the doctor in regard to depression. *Note from [REDACTED]* dated April 15, 2004. Counsel asserts that the applicant has depression and she lost her job due to her depressive state. *Brief in Support of Appeal*, at 2. The applicant was evaluated by a psychologist who diagnosed her with major depressive order, single episode. *Letter from [REDACTED]* dated September 7, 2006. The AAO acknowledges the important role of a clinical psychologist, however, the submitted report is based on a one-time meeting and there is no evidence of a follow-up appointment, proposed therapy or treatment for the applicant's spouse.

In regard to hardship the applicant's spouse would face upon moving to Romania, counsel details the poor medical facilities, crime, discrimination, language issues and unemployment in Romania. *Brief in Support of Appeal*, at 2. The record includes country information on Romania which support counsel's contentions. The AAO notes that the applicant's spouse will face some difficulties whether she remains in the United States or relocates to Romania.

However, the AAO notes that the applicant's marriage to his spouse occurred after his deportation. Therefore, his marriage to a U.S. citizen and her hardship are considered after-acquired equities which will be given less weight.

Where an applicant is seeking discretionary relief from removal or deportation and the courts are required to weigh favorable equities or factors against unfavorable factors, many have repeatedly upheld the general

principal that less weight is given to equities acquired by an alien after an order of deportation or removal has been issued. The AAO notes that the applicant's Form I-212 involves a similar weighing of equities or favorable factors against unfavorable factors in order to determine whether to grant discretionary relief.

In *Garcia-Lopez v. INS*, 923 F.2d 72 (7th Cir. 1991), for example, the Seventh Circuit Court of Appeals (Seventh Circuit) reviewed a Board of Immigration Appeals (Board) denial of an alien's request for discretionary voluntary departure relief. The Seventh Circuit found that the Board's denial rested on discretionary grounds, and that the Board 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 Board had not abused or exercised its discretion in an arbitrary or capricious manner.

In *Bothyo v. Moyer*, 772 F.2d 353, 357 (7th 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 (9th 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 (9th 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 (5th 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 Board'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 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 hardship to a spouse and for purposes of assessing favorable equities in the exercise of discretion.

The favorable factors in this case include the applicant's U.S. citizen spouse and general hardship she would experience, the lack of a criminal record, payment of taxes and letters of reference.

The AAO finds that the unfavorable factors in this case include the applicant's failure to depart after his grant of voluntary departure, his failure to appear for removal, his period of unauthorized stay and his unauthorized employment. The AAO notes that the basis for the applicant's removal was that he remained in the United States for a longer time than permitted. *Oral Decision of Immigration Judge*, at 1.

The applicant's actions in this matter cannot be condoned. 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 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.