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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

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IN RE:

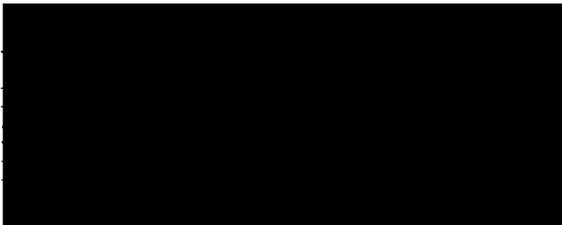
Applicant:



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:



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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the previous decisions of the Director and the AAO will be affirmed. The waiver application is denied.

The applicant is a native and citizen of India who entered the United States without inspection on June 20, 1998. On January 13, 1999, an immigration judge ordered the applicant removed *in absentia*. On June 24, 1999, the applicant filed a motion to reopen the immigration judge's decision. The immigration judge denied the motion to reopen on July 30, 1999. On or about August 30, 1999, the applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed by the BIA on March 20, 2002. On April 10, 2001, the applicant married [REDACTED] a United States citizen, in California. On April 23, 2001, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On February 24, 2003, the Fifth Circuit Court of Appeals (Fifth Circuit) dismissed the applicant's petition for review. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I). 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 reside with his United States citizen wife and United States citizen stepchildren.

The Director determined that the applicant was inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for being ordered removed under section 240 or any other provision of law and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated March 22, 2005. On April 22, 2005, the applicant filed an appeal of the Director's decision to the AAO. On June 19, 2006, the AAO dismissed the appeal. *Decision of the AAO*, dated June 19, 2006. On March 13, 2007, the applicant's Form I-130 was approved.

8 C.F.R. § 103.5(a) states in pertinent part:

(a) Motions to reopen or reconsider

....

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

....

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

....

In the present motion to reconsider, the applicant, through counsel, asserts that the "AAO mischaracterized Applicant's marriage to a U.S. citizen as an 'after acquired equity.' Applicant's marriage to a U.S. citizen occurred while his Motion to Reopen of the Removal Order was still pending on appeal at the Board of Immigration Appeals." *Motion to Reconsider*, page 1, dated July 17, 2006. The AAO notes that the applicant's marriage to his United States citizen spouse occurred after the applicant was ordered removed; therefore, it is an after acquired equity that is given less weight. Counsel states that "[w]hile it is true that Applicant initially entered illegally, since he had no alternative, he did so for the purpose of seeking asylum and immediately applied upon entry. Applicant did not fail to depart after the final removal order because he in fact had not exhausted all legal remedies available." *Id.* at 2. The AAO notes that the applicant exhausted all his legal remedies when the Fifth Circuit dismissed the applicant's appeal on February 24, 2003. At that time, the applicant had no other forms of relief pending, and he still failed to depart the United States. Finally, counsel claims that that the AAO "did not substantiate" their claim that the applicant "obtained employment without authorization." *Id.* at 3. The AAO notes that the applicant, through counsel, submitted tax documents establishing that the applicant was employed in 2002 and 2003. There is no evidence that his work authorization was extended beyond May 16, 2002.

The AAO finds that counsel failed to identify any legal errors in the prior AAO decision, and aside from counsel's assertions that the applicant's marriage to a United States citizen is not an after acquired equity, that the applicant did not fail to depart the United States after the final removal order, and that the applicant did not work without authorization, no new information or evidence was submitted in the motion to reconsider. Additionally, counsel failed to provide any affidavits, other documentary evidence, or any pertinent precedent decisions, in support of the motion to reconsider. Counsel has not established that the AAO decision of June 19, 2006 was in error.

Because counsel failed to overcome the prior decisions, the motion will be dismissed.

ORDER: The motion is dismissed and the previous decisions of the Director and the AAO are affirmed. The waiver application is denied.