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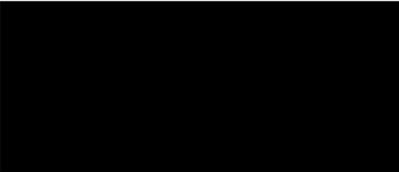
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE:



Office: HONG KONG

Date: OCT 19 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)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 Officer in Charge, Hong Kong, Special Administrative Region, 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 Taiwan who, on March 23, 1992, married [REDACTED]. On June 8, 1992, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by [REDACTED]. On September 4, 1992, the applicant and [REDACTED] divorced. On July 8, 1997, the applicant was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past her authorized stay, which expired on January 7, 1998. On April 5, 2000, [REDACTED] purportedly filed a second Form I-130. On August 29, 2003, Citizenship and Immigration Services (CIS) accepted [REDACTED] withdrawal of the original and the second Form I-130. On September 3, 2003, the Form I-485 was denied. On September 19, 2003, the applicant married her current spouse, [REDACTED]. On September 29, 2003, the applicant was placed into proceedings. On January 6, 2004, the immigration judge ordered the applicant removed *in absentia*. On February 3, 2004, a warrant for the applicant's removal was issued. On May 20, 2004, the applicant was removed from the United States and returned to Taiwan. On August 11, 2004, [REDACTED] filed a Form I-130 on behalf of the applicant. On July 18, 2006, 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). She 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 return to and reside in the United States with her U.S. citizen spouse.

The officer in charge determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Officer in Charge's Decision* dated July 21, 2006.

On appeal, the applicant contends that she did not commit fraud in an effort to obtain immigration benefits and that her application for permission to reapply for admission should be granted. *See Applicant's Letter*, dated August 8, 2006. The Form I-290B indicates that the applicant will submit a separate brief or evidence on appeal. More than a year later, the record does not contain a brief and/or additional evidence to support the appeal. The record is, therefore, considered complete.

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 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 reflects that the applicant was ordered removed on January 6, 2004. The applicant was removed from the United States under a final order of removal on May 20, 2004. Therefore, as the applicant is seeking admission to the United States within ten years of her 2004 departure, the AAO finds that she is 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 U.S. citizen by birth. The applicant and [REDACTED] do not have any children together. The applicant and [REDACTED] are in their 50's.

On appeal, the applicant asserts that [REDACTED] accompanied her to see an attorney who prepared her immigration application. She asserts that [REDACTED] provided all the information for the immigrant petition to the attorney and so the accusation that she forged [REDACTED] signature is a mistake. The AAO finds the applicant's assertions unpersuasive. The record reflects that the applicant executed a Biographical Information Sheet (Form G-325), dated March 21, 2000, indicating that she was married to [REDACTED]. See Form G-325, dated March 21, 2000. The record reflects that the applicant divorced [REDACTED] on September 4, 1992. Additionally, the record reflects that in removing the applicant, the immigration judge found the evidence sufficient to establish that on April 5, 2000, she sought to procure a visa, other documentation or admission into the United States or other benefit under the Act by fraud or willfully misrepresenting a material fact, to wit, submitting a fraudulent visa petition packet by forging the petitioner's signature.

[REDACTED] in his declaration, states that his mental and psychological state has been in a decline as a result of the stress of being parted from the applicant. He states his depression has prevented him from competently working and he continues to feel that he is incomplete without the applicant. He states that he will continue to experience an emotional decline if permanently separated from the applicant. He states that he could leave the United States but would be abandoning his goals, and his family and friends, which would only deepen his depression. He states that he is suffering economic hardships because he had to quit the tutoring business he and the applicant started together. He states that he had to accept a minimum income job and move in with his parents. He states that the applicant could help resolve his monetary problems because they could resume their profitable tutoring business together. He states that if he moved to Taiwan it would be unlikely that he would get a job and that the income from any job he was able to obtain would not be comparable to what he could earn in the United States. He states that he does not speak the language and there would be cultural barriers to his move to Taiwan. He states that when his mother reaches a state of declining health in the future she will require regular family assistance and he would be the only one able to provide such assistance because his sister lives in Hawaii.

A letter from [REDACTED] mother states that she and her husband depend greatly on [REDACTED]. She states that she and her husband have numerous health problems including arthritis, ambulatory and vision problems.

She states that [REDACTED] helps them around the house and drives them to medical appointments. She states that if [REDACTED] moved to Taiwan it would cause her and her spouse great hardship.

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 these precedent legal decisions to 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 a pending immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's attempt to obtain immigration benefits by fraud; her failure to appear at her immigration hearing; her failure to comply with an order of removal until May 20, 2004; and her inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, between January 7, 1998, the date her authorized stay expired, and May 20, 2004, the date on which she was removed from the United States, and seeking readmission within ten years of her last departure.

The applicant in the instant case has multiple immigration violations. The AAO finds that the applicant's marriage to [REDACTED] as well as the filing of the immigrant visa petition benefiting her, took place after the applicant was placed into proceedings. The AAO finds these factors to be "after-acquired equities" and therefore 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 she 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.