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FILE:



Office: VERMONT SERVICE CENTER

Date: SEP 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: 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, 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 Nigeria who, on March 7, 2001, was placed into proceedings. On March 27, 2001, the applicant married her spouse, [REDACTED]. On April 25, 2001, Mr. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On July 23, 2001, the immigration judge denied the applicant's request for voluntary departure and ordered her removed from the United States. The applicant appealed to the Board of Immigration Appeals (BIA). On November 14, 2001, the Form I-130 was approved. On December 12, 2002, the BIA dismissed the applicant's appeal. The applicant failed to comply with the order of removal. On February 24, 2005, the applicant filed a motion to reopen before the BIA. On March 18, 2005, a warrant was issued for the applicant's removal. The applicant filed a request for stay of removal. On April 12, 2005, the applicant's request for stay of removal was denied. On April 15, 2005, the applicant was removed from the United States and returned to Nigeria. On May 4, 2005, the BIA denied the applicant's motion to reopen. On December 17, 2005, 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) and 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 the United States and reside with her U.S. citizen spouse and children.

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated June 5, 2006.

On appeal, [REDACTED] contends that the applicant's actions in the past are ameliorated by various circumstances and that her family needs her in the United States. *See [REDACTED]'s Letter*, dated June 15, 2006. In support of his contentions, [REDACTED] submits letters from the applicant and her family. 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 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 removed from the United States on April 15, 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 Nigeria who became a lawful permanent resident in 1981 and a naturalized U.S. citizen in 1996. The applicant and [REDACTED] have an eleven-year old daughter, a nine-year old daughter and a four-year old son who are all U.S. citizens by birth. The applicant and Mr. [REDACTED] are in their 40's.

In court, the applicant testified that she entered the United States in June 1990 by presenting a passport bearing the name [REDACTED]. [REDACTED] in his letter, asserts that the applicant's original entry into the United States is ameliorated by the fact that she entered the United States to search for a good life and to be able send money home to her family in Nigeria.

The record reflects that, on December 18, 1992, the applicant was arrested in Beverly Hills, California and charged with fraudulent application, commercial burglary, counterfeit driver's license, grand theft and use of unlawfully obtained credit card under the name [REDACTED]. The outcome of this case is unknown. On October 20, 1994, the applicant was arrested in Edison, New Jersey and charged with credit card theft and fraudulent use of a credit card under the name [REDACTED]. On April 8, 1996, the charges were dismissed. On August 19, 1995, the applicant was arrested in New York and charged with grand larceny of property over the value of \$10 and criminal possession of stolen property over the value of \$1000 under the name [REDACTED]. As of January 24, 2005, the charges against the applicant were still pending. The immigration judge, in his oral decision, found that it was apparent to the court that the applicant used various aliases around the United States in an attempt to carry on credit card fraud propensities. The immigration judge found that the applicant had been less than truthful in court proceedings and that there were outstanding charges against her. Despite the applicant's failure to submit documentation to establish that all the charges were dismissed, she, in her letter, asserts that she was not convicted of any of the offences with which she was charged and that none of the charges against her are still active. The applicant asserts that she did not flee prosecution in these cases [REDACTED]. [REDACTED] in his letter, states that the applicant never denied that she committed the offences with which she was charged and that she regrets committing these crimes. He asserts that her actions in relation to these charges are ameliorated by the fact that they occurred a long time ago before she met him and that she has become a better person and chose to leave that life behind her when she married him. He asserts that the only reason she turned to a business in fraud was because she was unable to find another job.

[REDACTED] in his letter, states that he and his children have not seen the applicant since she was removed and that his children always ask when the applicant will return. He states that his children should not be deprived of her motherly love and affection. He states that he needs the applicant's presence in the United States so that he can look for a better job during the day because he has been forced to take night-shift employment in order to attend to his youngest child during the day.

The applicant, in her letter, states that she does not have a home in Nigeria and has been living with friends since her removal. She states that it is hard for her to find three square meals a day in Nigeria. She states that, while staying with a friend, she escaped an attack by three armed robbers who hit her in the face, resulting in the loss of a front tooth. She states that in the process of the robbery she escaped being raped. She states that [REDACTED] needs her assistance as a wife and a mother. She states that her children need her. She states that her children are her life and she does not want them to suffer because of her actions. She states that her separation from her children is affecting them.

Letters from the applicant's two oldest children indicate that they miss the applicant and it has been hard on them and their father to be separated from her.

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, three U.S. citizen children, the general hardship to the family members, and an approved immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's misrepresentation in gaining admission to the United States; her extended unlawful presence in the United States; her admitted involvement in credit card related fraud; her outstanding criminal charges; her failure to comply with an order of removal until April 15, 2005; 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 April 1, 1997, the date of enactment of unlawful presence provisions under the Act, and April 15, 2005, 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 and outstanding criminal charges. The AAO finds that the applicant's marriage, birth of her youngest child, and approval of the immigrant visa petition benefiting her occurred 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.