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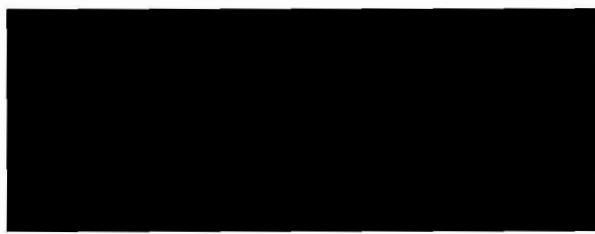
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 29 2008

IN RE: Applicant: [REDACTED]

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 sustained and the application approved.

The applicant is a native and citizen of Brazil who entered the United States on May 3, 2002 without inspection. On May 4, 2002, a Notice to Appear (NTA) was issued against the applicant. On May 15, 2002, an immigration judge ordered the applicant removed from the United States. On the same day, a Warrant of Removal/Deportation (Form I-205) was issued for the applicant. On July 2, 2002, the applicant was removed from the United States. On July 22, 2004, the applicant married [REDACTED], a naturalized United States citizen, in Brazil. 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). 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 with his United States citizen wife.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for being ordered removed from the United States, 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 February 20, 2007.

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.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, the applicant, through counsel, states “almost five years have passed since [the applicant’s] removal. Aside from his detention by INS, [the applicant] has never been arrested or convicted of a crime anywhere in the world. [The applicant] is a person of good moral character who has demonstrated that he has reformed and rehabilitated from his previous violations of INS laws by complying with INS regulations and never attempting to enter the United States since his removal in 2002. [The applicant] took the necessary steps following his marriage to reenter the United States and as required by immigration law, he applied for a waiver.” *Appeal Brief*, page 3, filed March 7, 2006. The applicant’s wife states that they “are both so deeply sorry from the bottom of [their] hearts for [the applicant’s] attempt to join [her] five (5) years ago. He now realizes it was the wrong way to go about things and regrets it so deeply.” *Affidavit from* [REDACTED] dated March 20, 2007. Counsel states the applicant and his wife “are suffering hardship due to the denial of [the applicant’s] waiver.” *Appeal Brief*, page 3, *supra*. The AAO notes that the applicant’s wife was diagnosed with major depression and she had a recent abnormal mammogram. *Letter from* [REDACTED], dated November 28, 2006. [REDACTED] states that “[a]t this point [it] will be beneficial for [REDACTED] to have her husband close to her for emotional support. *Id.* The applicant’s wife states that without the applicant, “[her] heart is broken, [she] always ha[s] tears in [her] eyes. [She is] waiting to have him here by [her] side...[T]he pain that [she is] feeling has been affecting [her] emotion state and well being...[She is] not the vibrant happy person [she] once was [she] feel[s] more depressed as time goes on. [She is] suffering inside and out because [she] need[s] [her] companion’s support. [She] desperately need[s] [her] husband. *Affidavit from* [REDACTED] *supra*. A friend of the applicant’s wife states the applicant’s wife “is sad all the time and with no interest on outside activities. [She] has encouraged her to keep her mind busy with hobbies or entertainment but having her husband far away from her does not make her happy. In order for her to be normal again and get out of this depressive behavior is to have her husband here with her. [She is] afraid that her mental status will change and her depression will worsen.” *Letter from* [REDACTED], dated November 28, 2006. The applicant’s wife states she only can afford to travel to Brazil once a year. *Letter from* [REDACTED], dated October 17, 2006. The applicant’s wife states that she “wish[es] to continue with [her] education and go to nursing school but it is very difficult for [her] to accomplish this goal on [her] own...[If the applicant] was here he would be employed and he would add to [her] income and be able to cover some of [their] home expenses and [she] can start investing in [her] education. If he was here [they] would be able to support and assist each other in the goals that [they] each have set for [their] future. With [her] husband in Brazil [they] are not able to fulfill [their] lives together, [they] want to form [their] own family, buy a house, and invest into a better future for [themselves].” *Id.* Regarding the hardship suffered by the applicant’s wife, unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States

after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's spouse, but it will be just one of the determining factors.

The record of proceedings reveals that on May 15, 2002, an immigration judge ordered the applicant removed from the United States. On July 2, 2002, the applicant was removed from the United States. Based on the applicant's previous order of removal, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

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.*

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 (BIA) denial of an alien's request for discretionary voluntary departure relief. The Seventh Circuit found that the BIA's denial rested on discretionary grounds, and that the BIA 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 BIA 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 BIA’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 matter are the applicant’s family ties to a United States citizen, his wife, hardship she is experiencing, and no criminal record. The AAO notes that the applicant’s marriage to his wife occurred after his order of removal and is an after-acquired equity. As an after-acquired equity this factor will be given less weight.

The AAO finds that the unfavorable factor in this case is the applicant’s initial entry without inspection.

While the applicant’s actions cannot be condoned, the AAO finds that given all the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary’s discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.