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Date: DEC 02 2008

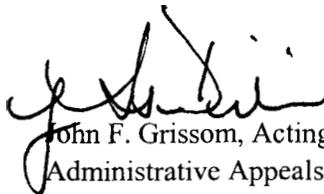
IN RE:

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.

  
John F. Grissom, Acting 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 Pakistan who, on May 25, 1990, was admitted to the United States as a nonimmigrant visitor. The applicant overstayed her nonimmigrant status, which expired on November 24, 1990. On January 14, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On July 22, 1998, the Form I-485 was denied because the applicant had no basis for filing for adjustment of status. On July 1, 1999, the applicant was placed into immigration proceedings. On August 3, 2000, the applicant filed an Application for Asylum and Withholding of Removal (Form I-589) before the immigration judge. On April 10, 2001, the immigration judge denied the applicant's applications for asylum, withholding of removal and convention against torture and granted her voluntary departure until June 11, 2001. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On May 2, 2003, the BIA affirmed the immigration judge's decision. The applicant failed to surrender for removal or depart from the United States, thereby changing the grant of voluntary departure to a final order of removal. On July 11, 2003, [REDACTED] filed a Petition for Alien Worker (Form I-140) on behalf of the applicant, based on an approved Alien Labor Certification (ETA-750). The applicant filed a petition with the Fourth Circuit Court of Appeals (Fourth Circuit) to review the BIA's decision. On December 16, 2003, the Fourth Circuit denied the applicant's petition. On September 1, 2004, the Form I-140 was denied. On April 10, 2006, the applicant filed the Form I-212. On the Form I-212, the applicant indicated that she departed the United States on July 21, 2004, and entered Canada, where she has since resided. The applicant is inadmissible under section 212(a)(9)(A)(ii) of 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 reside in the United States with her U.S. citizen daughter.

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 March 16, 2007.

On appeal, the applicant contends that the director failed to recognize certain favorable factors. *See Applicant's Letter*, dated March 28, 2007. In support of her contentions, the applicant submits the referenced letter, letters from her daughter and her daughter's principal and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years 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.
- (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 on a 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 Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant is married to [REDACTED], who is a native and citizen of Pakistan. The applicant and [REDACTED] have a 15-year old daughter who is a U.S. citizen by birth. The applicant and [REDACTED] have a 32-year old son and a 29-year old son who are both natives and citizens of Pakistan. The record reflects that the applicant's 29-year old son resides in the United States and has applied for adjustment of status. However, the applicant's son has not become a lawful permanent resident. The record reflects that the applicant and [REDACTED]s third son passed away in 1995 and was buried in a cemetery in New Jersey. The applicant is in her 50's and [REDACTED] is in his 60's.

The AAO now turns to a consideration of positive and adverse factors in the present case.

On appeal, the applicant asserts that the director failed to consider that her youngest son, who passed at the age of eleven, is buried in Linden, New Jersey. She states that the family would visit his grave every month and they are desperate to be able to freely visit his grave again. She states that she and her family have never taken welfare or financial aid from the U.S. government and supported themselves while residing in the United States. She states that her 29-year old son resides in the United States and is married to a U.S. citizen. The applicant states, and the record reflects, that [REDACTED] has an approved Form I-212. The applicant **states that the director mischaracterized her decision to reside in Canada separately from [REDACTED]** who resides in the United Arab Emirates (UAE) with their 32-year old son. She states that she chose to reside in Canada because she had no home or family members in Pakistan. She states that she was concerned for her and her daughter's safety in Pakistan because, at the time she departed the United States, her husband was still in custody in the United States.

The applicant states that, despite her daughter's apparent adjustment to life in Canada, she is in pain and suffering because of her separation from her family. She states that her daughter feels helpless at home and lonely after school with no family members to cheer her on or support her. The applicant states that her son and husband had a hard time adjusting to life in Pakistan and decided to move to the UAE. She states that her husband and son opened a small business in order to survive. She states that their life in the UAE is filled with problems and difficulties. She states that they, as foreign citizens, are treated as the lowest class of society. She states that the employment in the UAE is insufficient to support a family. She states that she and her daughter cannot afford to join them in the UAE. She states that her daughter would be unable to continue her education due to costs, as well as cultural and language barriers. She states that she and her daughter are

unhappy living in Canada without their family. She states that they have resided in Canada for more than three years and they do not know how much longer their case will take to be approved. She states that, even after approval, she does not know how long it will take to have her husband and son join them in Canada.

While the applicant asserts that both she and her 32-year old son have separate Form I-140s that are pending, the record reflects that both the applicant's and her son's Form I-140 have been denied. Documentation in the record reflects that the applicant and her daughter have legal status in Canada that enables them to be issued Interim Federal Health Program Benefits and Social Insurance Numbers in Canada. The applicant has not provided documentation to establish her and her daughter's exact immigration status in Canada.

On appeal, the applicant's daughter-in-law, in her letter, states that the family was unable to attend her marriage to the applicant's 29-year old son. She states that she is a U.S. citizen. She states that she believes the applicant's daughter is doing very well in school, but that her mental state and emotions indicate that she is overwhelmed with stress and sadness as a result of her separation from her family. She states that it is difficult for a mother to raise her child alone. She states that the applicant's husband and brothers should be present to help support her physically and mentally. She states that the family is totally harmless and are individuals who just want to live in a country that has freedom, opportunities and education.

The applicant's daughter, in a letter submitted with the Form I-212, states that her family is separated and living in three different countries. She states that the applicant is working hard to run two stores in Canada. She states that one of her brothers is running the family business in the United States. She states that it has been two years since she saw her oldest brother and father. She states that she thinks of them every day. She states that all she wants is for them to be a family again.

A letter from [REDACTED], Principal of the Glen Cairn Public School in Ontario, Canada, states that the applicant's daughter is a student at the school, who has been successful in her academic endeavors and contributes to the social and athletic events at the school. He states that she is an active and positive contributor to the volleyball, soccer and basketball teams. He states that she is a responsible student who enjoys Mathematics and treats the staff and students with respect. He states that she has stated her desire to reunite with her family in Virginia and she is positive and reflects optimism about the future.

A letter from [REDACTED] Executive Director of [REDACTED], states that the applicant is a good Muslim with high moral character. He states that the applicant is a good mother and wife, who raised her children in a very special way. He states that the applicant is not merely a housewife, but also helps the family business as a good salesperson and skilled and talented picture framer. He states that the applicant now resides in Canada and supports herself by operating a fashion accessories business in Ontario, Canada. He states that the applicant also serves her elderly mother and used to volunteer at the school and the Masjid in Virginia.

A letter from [REDACTED] the Secretary of the London Muslim Mosque, states that the applicant is an honorable member of the Muslim community and has participated in prayers and other religious and social activities for the past two years.

Tax records reflect that the applicant and her spouse filed business tax returns in 1999. The record reflects that the applicant was employed as a cook in the United States from February 1996, until September 1998. The record reflects that the applicant helped run the family framing business, which was established in May 2000. The applicant has never been issued employment authorization in the United States.

The applicant is also inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing unlawful presence from July 3, 2003, the date on which her voluntary departure expired after the BIA affirmed the immigration judge's decision, and July 21, 2004, the date on which she departed the United States, and seeking admission to the United States within ten years of her last departure. In order to seek a waiver of inadmissibility under sections 212(a)(9)(B)(v) of the Act, an applicant must file an Application for Waiver of Ground of Inadmissibility (Form I-601).

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. *Supra*.

*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 7<sup>th</sup> Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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.

As established by the record, the favorable factors in this matter are the applicant's U.S. citizen daughter, the general hardship to her family if she were denied admission to the United States, her otherwise clear background, and her payment of business taxes.

The AAO finds that the unfavorable factors in this case include the applicant's overstay of her nonimmigrant status; her extended unauthorized residence and employment in the United States; her failure to comply with an order of voluntary departure; her failure to comply with an order of removal until July 21, 2004; her unlawful presence in the United States; and her inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The applicant in the instant case has multiple immigration violations. Moreover, the record fails to establish that she is the beneficiary of any immigrant or nonimmigrant visa petition that would offer her a means of acquiring lawful residence in the United States. The totality of the evidence demonstrates 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.