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U.S. Citizenship  
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714

**PUBLIC COPY**

[Redacted]

FILE:

[Redacted]

Office: LONDON, UNITED KINGDOM  
RELATES)

Date: JAN 07 2008

IN RE:

[Redacted]

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:

[Redacted]

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, London, United Kingdom (U.K.) 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.

On March 20, 1991, the applicant's brother, F [REDACTED], filed a Petition for Alien Relative (Form I-130) on his behalf, which was approved on June 5, 1991. On March 11, 1992, the applicant's mother, [REDACTED] became a lawful permanent resident. The applicant is a native of India and a citizen of the U.K. who, on September 24, 1992, was placed into proceedings after he remained in the United States past his authorized nonimmigrant stay. On September 28, 1992, the applicant was removed from the United States. On December 2, 2004, the applicant filed the Form I-212. On December 3, 2004, the applicant appeared at the U.S. Embassy in London, U.K. The applicant testified that he had reentered the United States as a visa waiver tourist in November 1992 and had remained in the United States until April 20, 2004, the date on which he returned to the U.K. in order to attend his immigrant visa interview in connection with the approved Form I-130. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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 return to the United States and reside with his lawful permanent resident mother.

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 May 20, 2005.

On appeal, counsel contends that the officer in charge abused her discretion in denying the application. *See Form I-290B*, dated June 10, 2005. The Form I-290B indicates that counsel will submit a separate brief or evidence on appeal within 120 days. On March 9, 2007, the AAO informed counsel that he had five days in which to submit this documentation. Counsel has not responded. The record is, therefore, considered complete.

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 [REDACTED] is a native and citizen of India who became a lawful permanent resident in 1992. [REDACTED] is a native of India who became a lawful permanent resident in 1984 and a naturalized U.S. citizen in 1990. The applicant is engaged to [REDACTED], a native and citizen of India who became a lawful permanent resident in 2003. [REDACTED] has a five-year old son who is a U.S. citizen by birth. The AAO notes that, while the applicant claims that [REDACTED]'s son is his biological child, the birth certificate does not reflect that the applicant is his father. The applicant is in his 30's, [REDACTED] is in her 60's and Mr. [REDACTED] is in his 50's.

The AAO finds that the officer in charge, in her decision, incorrectly stated that the applicant had been removed from the United States in 2004.

On appeal, counsel asserts that the officer in charge incorrectly utilized the applicant's brother's immigration violations as a negative factor when there is no evidence that the applicant participated in [REDACTED]'s immigration violations. The AAO finds that the officer in charge did not rely on these violations as a factor in determining that the applicant did not warrant a favorable exercise of discretion. The decision reflects that the officer in charge merely noted [REDACTED]'s immigration violations for the record.

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

On appeal, counsel asserts that the only immigration violations the applicant has ever committed are his 1992 removal, his re-entry after having been removed in 1992 and his unlawful employment and presence in the United States without authorization. However, the record reflects that the applicant's fingerprints match an FBI record under the name [REDACTED]. On October 2, 1995, the applicant filed an Application for Asylum or Withholding of Removal (Form I-589) under the name [REDACTED]. In support of the application, the applicant submitted an Indian Birth Certificate under the name "[REDACTED]" and a signed statement indicating that he had been arrested in 1994 in India before entering the United States without inspection in 1995. On July 30, 1996, the applicant was placed into proceedings under the name "[REDACTED]" after he failed to appear for an asylum interview. On December 17, 1996, the immigration judge administratively closed immigration proceedings for future re-calendar, because the applicant failed to appear for his immigration hearing. On February 5, 1999, the applicant was issued a notice to appear before a deportation officer. The applicant informed the deportation office that he had moved to Canada. On July 22, 1999, a Departure Verification Form (G-146) was issued under the name "[REDACTED]" instructing the applicant to take the Form G-146 to the nearest American Consulate in order to verify the applicant's departure from the United States. On October 17, 1999, the Form G-146 was directly mailed from Canada to the deportation office and not via the U.S. Consulate as instructed. The applicant failed to verify his departure with the U.S. Consulate in Canada.

The applicant, in his declaration dated October 28, 2004, states that he only returned to the United States after his 1992 removal because he had to care for his mother who had been very sick and is suffering from hypertension, insomnia and memory loss. He states that he arranged for his mother's health insurance and care in the United States and that there is no one else to care for her. The AAO notes, however, that the record establishes that at least one of the applicant's adult siblings has legal status and resides in the United States. The applicant also states that he is financially and emotionally responsible for his fiancée and son. He states that his family's lives will be ruined because there is no one who would take care of them and he cannot stand to see his son raised without a father as he was.

[REDACTED], in her declaration dated October 26, 2004, states that the applicant originally overstayed his authorized stay because she was afraid to send him back to live with his Uncle who was not treating him well. She states that when he left the United States she became depressed and very ill. She states that she started to show signs of high blood pressure and memory loss and she forced her son to come back to the United States. She states that over the years she became more ill and her son was caring for her. She states that, since the applicant left the United States, her health has deteriorated and that she cannot live without her youngest son to whom she is very attached emotionally.

A letter, dated September 23, 1997, from [REDACTED], a doctor at the Merrithew Memorial Hospital and Health Center in Martinez, California, indicates that [REDACTED] has been under his care since 1994 and has been diagnosed with hypertension and hyperlipidemia. It states that [REDACTED] has clinical findings of cervical osteoarthritis with pain at the back of her neck that radiates to the top of her head and is being treated for insomnia.

[REDACTED], in her declaration dated October 26, 2004, states that she and the applicant have a son together and it has been hard for her to care for their son without the applicant's assistance. She states that her son is emotionally attached to the applicant and she cannot pay her bills without the applicant's support.

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 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 lawful permanent resident mother, U.S. citizen brother, lawful permanent resident fiancée and her son, an approved immigrant visa petition for alien relative and the applicant's mother's health problems. The AAO notes that the applicant's relationship with his fiancée and the birth of his fiancée's son occurred after the applicant was ordered removed, and are "after-acquired equities" and the AAO accords them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's reentry into the United States after having been removed; his misrepresentations in filing an asylum application in 1995; his failure to appear before an immigration judge; and his extended unlawful presence and employment in the United States.

The applicant in the instant case has multiple immigration violations and a criminal conviction. 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.

The AAO notes that the record indicates that the applicant may be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), based on his 1995 attempt to obtain immigration benefits by fraud. To seek a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), an applicant needs to file an Application for Waiver of Ground of Inadmissibility (Form I-601) at the time he applies for an immigrant visa. The record reflects that, on December 2, 2004, the applicant filed a Form I-601 for 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 on which unlawful presence provisions were enacted under the Act, and April 20, 2004, the date on which he departed the United States, and seeking readmission within ten years of his last departure. The Form I-601 remains un-adjudicated.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he 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.