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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: VERMONT SERVICE CENTER

Date: **JUL 09 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, Vermont Service Center. A subsequent appeal and motion to reopen were dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed. The application for permission to reapply for admission after removal is denied.

The applicant is a native and citizen of Egypt who initially entered the United States on July 17, 1994, on a B-2 nonimmigrant visa with authorization to remain in the United States until January 16, 1995. On December 30, 1994, the applicant filed a Request for Asylum in the United States (Form I-589). On February 5, 1996, an Order to Show Cause (OSC) was issued against the applicant. On January 22, 1997, an immigration judge ordered the applicant deported *in absentia*. On January 27, 1997, the applicant filed a motion to reopen the immigration judge's decision. On March 31, 1997, the applicant's first wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The immigration judge denied the motion to reopen on April 2, 1997. On April 21, 1997, the applicant filed an appeal with the Board of Immigration Appeals (Board). On May 31, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On April 1, 1998, the applicant and his first wife divorced in New Jersey. On April 23, 1999, the applicant married his second wife. On April 13, 1999, the Board dismissed the applicant's appeal. On April 16, 1999, the applicant's second wife filed a Form I-130 on behalf of the applicant. On April 27, 1999, the applicant filed a motion to reopen the Board's decision. The Board denied the motion to reopen on May 25, 2000. On August 1, 2000, a Warrant of Removal/Deportation (Form I-205) was entered against the applicant. On September 11, 2000, the applicant's second Form I-130 was approved. On October 5, 2000, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On or before November 21, 2000, the applicant departed the United States. 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)(I). 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 reside with his United States citizen wife.

The Director determined that the applicant was inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for being removed from the United States, that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Form I-212 accordingly. *Director's Decision*, dated September 7, 2001. On October 5, 2001, the applicant filed an appeal of the Director's decision to the AAO, which the AAO dismissed on March 7, 2002. *Decision of the AAO*, dated March 7, 2002. **On March 28, 2002, the applicant filed a motion to reopen the AAO's decision.** On September 26, 2002, the AAO dismissed the applicant's motion to reopen, finding the "issues in this matter were thoroughly discussed by the Director and the Associate Commissioner in their prior decisions. Since no new issues have been presented for consideration, the motion will be dismissed." *Decision of the AAO*, dated September 26, 2002. On October 25, 2002, the applicant filed a motion to reopen and reconsider the AAO's decision on the first motion to reopen.

In the present motion to reopen and reconsider, the applicant, through counsel, reasserts that "at no time did [the Director and the AAO] actually engage in a systematic and methodical analysis of the case whereby the

applicant's equities were balanced against the single unfavorable factor in his record to wit: his failure to depart the United States when scheduled." *Counsel's affirmation*, dated October 24, 2002. The AAO notes that other unfavorable factors in the applicant's case include periods of unauthorized employment and presence. Additionally, the AAO notes that on July 7, 2006, the applicant attempted to enter the United States on a B-1/B-2 nonimmigrant visa, and he was removed from the United States on the same day. Therefore, the AAO finds that the applicant's attempt at reentering the United States after being ordered removed from the United State for a period of 10 years is an unfavorable factor. Counsel claims that "[m]ost important is the fact that the [applicant] is married to a United States citizen, with whom he will be celebrating his sixth anniversary...Moreover, the [Service] itself confirmed the validity of this marriage by approving his wife's I-130 petition filed on behalf of the applicant." *Id.* The AAO notes that on the applicant's nonimmigrant visa application, he states his marital status is "divorced" and he does not list his wife in the space offered in the supplemental nonimmigrant visa application. Additionally, if the applicant is still married to his second wife, it occurred while the applicant was in removal proceedings; therefore, it is an after acquired equity that would be given less weight.

The issues raised by counsel in the motion to reopen and reconsider were previously raised in the initial appeal and motion to reopen, and those issues were addressed by the AAO. Counsel did not identify any legal errors in the prior AAO or Director's decisions, and no new information or evidence was submitted in the motion to reopen and reconsider. Additionally, counsel failed to provide any affidavits, other documentary evidence, or any pertinent precedent decisions, in support of the motion to reconsider. Counsel has not established that the AAO decision of September 26, 2002 was in error.

8 C.F.R. § 103.5(a) states in pertinent part:

(a) Motions to reopen or reconsider

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The issues raised in counsel's motion to reopen and reconsider were thoroughly addressed in the previous AAO decisions, and counsel failed to establish any legal error in the AAO decisions or the Director's decision.

Because counsel failed to identify any erroneous conclusion of law or statement of fact in his brief, the motion will be dismissed.

ORDER: The motion is dismissed and the previous decisions of the Director and the AAO are affirmed. The application for permission to reapply for admission after removal is denied.