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

PUBLIC COPY

HLC

[Redacted]

FILE: [Redacted] Office: HOUSTON, TEXAS Date: JUN 12 2008
[relates]

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:
[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 application for permission to reapply for admission after removal was denied by the Field Office Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Singapore who entered the United States on November 26, 1990 on a B-2 nonimmigrant visa. On December 29, 1990, the applicant departed the United States. On November 18, 1991, the applicant entered the United States on an F-1/F-2 nonimmigrant visa. On August 25, 1992, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On November 19, 1992, the applicant's Form I-130 was approved. On October 21, 1995, [REDACTED] filed a Form I-130 on behalf of the applicant. On November 30, 1995, the applicant departed the United States. On December 12, 1995, the applicant entered the United States on a B-2 nonimmigrant visa, with authorization to remain in the United States until June 11, 1996. On February 22, 1996, the applicant's Form I-130 was approved. On April 15, 1996, Care Inn of Ganado filed an Immigrant Petition for Alien Worker (Form I-140) on behalf of the applicant. On June 12, 1996, the applicant departed the United States. On August 8, 1996, the Form I-140 was approved. On August 26, 1996, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until February 25, 1997. On January 3, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On February 25, 1997, the applicant departed the United States. On September 19, 1997 the applicant attempted to enter the United States with a valid passport and valid visitor's visa. In secondary inspection she indicated that she was coming to the United States to work as a nurse. She was informed that she did not have the proper visa and withdrew her request for admission. On January 3, 1998, the applicant attempted to enter the United States by claiming United States citizenship. She made a timely retraction of that claim, however, she was determined not to be in possession of a valid visa and was refused admission to the United States. On September 9, 1999, the applicant entered the United States on the Visa Waiver Pilot Program. On October 9, 1999, the applicant departed the United States. On January 13, 2000, the applicant entered the United States on advance parole. On June 1, 2001, the applicant's Form I-485 was denied. On July 6, 2001, the applicant filed another Application to Register Permanent Resident or Adjust Status (Form I-485). On August 15, 2002, a Notice to Appear (NTA) was issued against the applicant. On October 24, 2002, the applicant's husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed a Form I-485. On January 21, 2003, an immigration judge granted the applicant voluntary departure. On February 12, 2003, the applicant filed an appeal of the immigration judge's decision with the Board of Immigration Appeals (BIA). On February 9, 2004, the BIA affirmed the immigration judge's decision. On February 24, 2004, the applicant filed a request for an extension of her voluntary departure, which was denied on April 5, 2004. On May 18, 2004, a Notice of Intent to Deny the applicant's Form I-130 was sent to the applicant. On June 1, 2004, the applicant departed the United States. On August 2, 2004, the applicant's Form I-130 was denied. On September 1, 2004, the applicant filed a motion to reopen the Form I-130 denial. On October 12, 2004, the applicant, through counsel, filed an appeal of the Service's September 17, 2004 decision regarding the applicant's breached bond. On September 26, 2005, the applicant's husband filed another Form I-130 on behalf of the applicant. On April 28, 2006, the applicant's Form I-130 was approved. On May 31, 2006, the motion to reopen was denied, and the applicant's Forms I-485 that were filed on July 6, 2001 and October 24, 2002 were denied for abandonment.

On March 19, 2007, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On November 13, 2007, the Field Office Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting a material fact in order to seek admission into the United States. The Field Office Director denied the applicant's Form I-212 because she failed to file a Waiver of Grounds of Excludability (Form I-601) simultaneously with the Form I-212. *Field Office Director's Decision*, dated November 17, 2007. The AAO finds that the applicant is also inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 212(a)(9)(A)(ii)(I), for failing to timely abide by an order of voluntary departure, which then converted to a removal order. She 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 her naturalized United States citizen spouse and daughter.

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 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 continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Counsel claims that the Field Office Director's "decision is not supported by the evidence and will cause irreparable harm and extreme hardship to Applicant and her family and in particular her U.S. Citizen husband,

who is depending on upon her.” *Form I-290B*, filed December 12, 2007. The applicant’s husband states he and the applicant “are much attached together and [they] communicate over the telephone and via e-mail almost every day. [Their] separation has deeply affected [him] emotionally since [they] were a happy couple during [their] marriage. [He is] currently going through a depression and suffering an extreme hardship since [the applicant] left. [He] really need[s] her back...[He is] devastated without her.” *Affidavit from* [REDACTED], dated December 7, 2007.

[REDACTED] diagnosed the applicant’s husband with major depression, “which seem[s] to be related to [the applicant’s] deportation...In addition to suffering from Major Depression, [the applicant’s husband] also seems to be experiencing symptoms of anxiety as he reported experiencing increased heart palpitations.” *Letter from* [REDACTED], *Licensed Psychologist*, dated December 11, 2007. Regarding the hardship the applicant’s husband may face, the AAO notes that 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 husband, but it will be just one of the determining factors.

The record of proceedings reveals that on January 21, 2003, an immigration judge granted the applicant voluntary departure until March 22, 2003. On February 12, 2003, the BIA affirmed the immigration judge’s decision. On April 5, 2004, the applicant’s request for an extension of her voluntary departure was denied. The applicant departed the United States on June 1, 2004. 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.*

The favorable factors in this matter are the applicant’s family ties to a United States citizen, her husband, general hardship he may experience, no criminal record, and the approval of a petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's attempt to enter the United States by claiming United States citizenship and her failure to timely depart the United States after being granted voluntary departure.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Counsel contends that the Field Office Director "erroneously made determinations that Applicant was inadmissible under 212(a)(6)(C)(i) of [the Act] because of allegations of misrepresentation of a material fact, Applicant is eligible for a [Form I-601] Waiver." *Form I-290B, supra*. Counsel claims that the applicant filed a Form I-601 and attached a copy of a Form I-601, dated December 7, 2007, to the applicant's appeal.

8 C.F.R. § 212.2(d) states, in pertinent part:

(d) *Applicant for immigrant visa*. Except as provided in paragraph (g)(3) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. Except as provided in paragraph (g)(3) of this section, if the applicant also requires a waiver under section 212 (g), (h), or (i) of the Act, Form I-601, Application for Waiver of Grounds of Excludability, must be filed *simultaneously* with the Form I-212 with the American consul having jurisdiction over the alien's place of residence. The consul must forward these forms to the appropriate Service office abroad with jurisdiction over the area within which the consul is located.

Emphasis added.

The AAO notes that there is no evidence that the applicant filed her Form I-212 and Form I-601 simultaneously with the American consul having jurisdiction over the alien's place of residence; therefore, the applicant's Form I-212 was not properly filed. Accordingly, the appeal will be dismissed for this additional reason.

ORDER: The appeal is dismissed.