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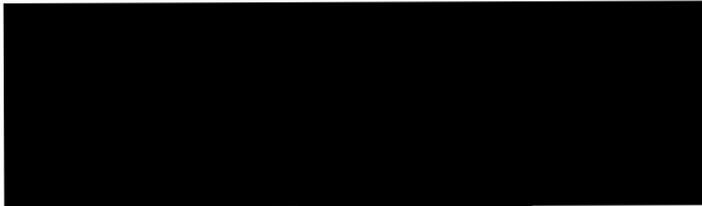
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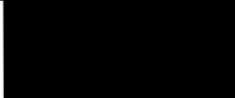
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAY 13 2008**

IN RE:

Applicant:



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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 dismissed.

The applicant is a native and citizen of the Philippines who married her first husband on April 14, 1961, in the Philippines. On February 4, 1993, the applicant entered the United States on a B-2 nonimmigrant visa, with authorization to remain in the United States until August 2, 1993. On November 3, 1993, the applicant filed a Request for Asylum in the United States (Form I-589). The applicant's asylum application was referred to an immigration judge. On June 30, 1995, an Order to Show Cause (OSC) was issued against the applicant. On December 21, 1995, an immigration judge ordered the applicant deported *in absentia*. On February 7, 1996, the applicant filed a motion to reopen the immigration judge's decision. On February 21, 1996, an immigration judge denied the applicant's motion to reopen. The applicant failed to depart the United States as ordered. On January 25, 1996, a Warrant of Deportation (Form I-205) was issued. On March 20, 1997, the applicant divorced her first husband in Nevada. On the same day, the applicant married [REDACTED], a lawful permanent resident of the United States, in Nevada. On January 12, 1998, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On September 14, 1999, the applicant's Form I-130 was denied for abandonment. On September 22, 1999, the applicant's husband filed another Form I-130 on behalf of the applicant. On May 25, 2005, the applicant voluntarily departed the United States. On December 1, 2005, the applicant's second Form I-130 was approved. On August 7, 2006, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). 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). 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 spouse.

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 under section 240 or any other provision of law, and denied the applicant's 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 claims that her husband "needs [her] very badly. He is 76 years old and sick. He is leaving [sic] alone and lonely. [She] want[s] to take care of him in the remaining days of his life." *Form I-290B*, filed March 14, 2007. The AAO notes that the applicant's spouse did not provide a statement or an affidavit regarding the hardship he has been suffering since the applicant departed the United States. The AAO finds that the applicant's marriage to a lawful permanent resident of the United States is a favorable factor; however, she married her husband after she was ordered deported from the United States; and therefore, it will be given less weight. The applicant claims that she resided in the United States for more than 10 years; however, many of the years that the applicant resided in the United States were without authorization and that is an unfavorable factor. *See letter from the applicant*, dated March 16, 2007. Dr. [REDACTED] states the applicant's husband "suffered a stroke in July of 2006 which left him with right-sided weakness. He had left shoulder and elbow injury after a fall because of weakness. He now needs to use a cane to walk. [The applicant's husband] also suffers from depression, weight loss, difficulty sleeping, diabetes, and other illnesses." *Letter from [REDACTED]* dated April 2, 2007. The AAO notes that there was no documentation submitted establishing that the applicant's husband could not receive treatment for his medical conditions in the Philippines or that the applicant's husband has to remain in the United States to receive his medical treatments. Regarding the applicant's husband's depression, there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety or whether any depression and anxiety is beyond that experienced by others in the same situation. Additionally, the AAO notes that the applicant's husband is a native of the Philippines, who spent his formative years in the Philippines. 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 December 21, 1995, an immigration judge ordered the applicant deported from the United States. On January 25, 1996, a Form I-205 was issued, and on May 25, 2005, the

applicant voluntarily departed the United States. Based on the applicant's previous order of deportation, 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 (Board) denial of an alien's request for discretionary voluntary departure relief. The Seventh Circuit found that the Board's denial rested on discretionary grounds, and that the Board 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 Board 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 OSC 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 Board’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 lawful permanent resident, her husband, general hardship he may experience, approval of a petition for alien relative, and a history of paying taxes. The AAO notes that the applicant’s marriage to her husband occurred after her order of deportation and is an after-acquired equity. As an after-acquired equity this factor will be given less weight.

The AAO finds that the unfavorable factors in this case include the applicant’s failure to abide by an order of deportation, and periods of unauthorized presence and employment.

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.

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