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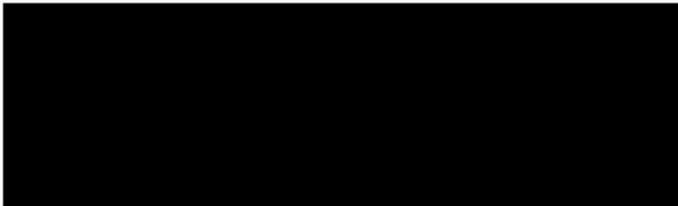
U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: ISLAMABAD, PAKISTAN

Date: **MAY 20 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:



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 Officer-In-Charge (OIC), Islamabad, Pakistan, and 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 initially entered the United States on June 2, 1990, on an F-1 nonimmigrant student visa, to attend Wartburg College in Waverly, Iowa. The applicant failed to maintain his nonimmigrant status by failing to attend Wartburg College. On March 18, 1993, the applicant filed an Application for Asylum and/or Withholding of Removal (Form I-589). The applicant's Form I-589 was referred to an immigration judge. On November 3, 1995, an Order to Show Cause (OSC) was issued against the applicant. On May 15, 1996, an immigration judge granted the applicant voluntary departure until November 15, 1996. On November 12, 1996, the applicant married [REDACTED] a naturalized United States citizen, in California. On November 14, 1996, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The applicant filed an extension of his voluntary departure which was granted until January 15, 1997. On December 17, 1996, the applicant filed a motion to reopen the immigration judge's decision. On January 13, 1997, an immigration judge denied the applicant's motion to reopen. The applicant failed to depart the United States. The applicant filed an appeal of the immigration judge's decision on his motion to reopen with the Board of Immigration Appeals (BIA). On October 16, 1997, the BIA dismissed the applicant's appeal. The applicant failed to depart the United States. On December 18, 1997, the applicant's Form I-485 was denied. On February 18, 1998, a Warrant of Removal/Deportation (Form I-205) was issued against the applicant. On December 16, 1998, the applicant's daughter, [REDACTED], was born in California. The applicant filed another motion to reopen which was denied by an immigration judge on January 9, 2001. On January 22, 2001, the applicant's wife filed a second Form I-130 on behalf of the applicant. On July 16, 2001, the applicant's son, [REDACTED], was born in California. On February 25, 2002, the applicant was apprehended and taken into custody. On March 7, 2002, the applicant filed a motion to reopen to the BIA. The applicant filed a Stay of Deportation, which was denied on March 22, 2002. On April 29, 2002, the BIA denied the applicant's motion to reopen. On October 31, 2002, another Form I-205 was issued, and on November 20, 2002, the applicant was removed from the United States. On February 19, 2004, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On August 9, 2004, the applicant's second Form I-130 was approved. On November 2, 2004, the director, California Service Center, denied the applicant's Form I-212.

On December 2, 2004, the applicant filed an appeal of the director's decision to the AAO. On January 30, 2006, the AAO dismissed the applicant's appeal. On May 25, 2006, the applicant filed another Form I-212 and a Waiver of Grounds of Excludability (Form I-601). On January 26, 2007, the OIC, Islamabad, Pakistan, denied the applicant's Form I-212 and Form I-601. 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), for being ordered removed under section 240, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for his unlawful presence in the United States. He 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 his naturalized United States citizen spouse and two United States citizen children.

The OIC 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 from the United States, and that the unfavorable factors in the applicant's case outweighed the favorable factors. The OIC denied the applicant's Form I-212 accordingly. *Officer-In-Charge's Decision*, dated January 26, 2007. The AAO finds that 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 his unlawful presence in the United States.

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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

. . . .

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

- (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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, through counsel, asserts that the OIC's "contention that the [a]pplicant's marriage is an 'after-acquired family tie' is incorrect." *Appeal Brief*, page 1, dated February 23, 2007. The AAO notes that while the applicant's immigration case was being appealed, he was not subject to the deportation order; however, the applicant did marry while he was in proceedings. Counsel contends that the applicant "entered the country legally and has been inside the immigration system, vigilantly attempting to gain legal status since entry." *Id.* at 4. The AAO notes that the applicant may have entered the United States on a legal F-1 nonimmigrant student visa, but he never attended the school he claimed he would be attending. Counsel claims that the applicant's children are suffering "great hardship" without the applicant, and "if they go to Pakistan they will still find their life under a different set of great hardships including immediate physical danger, health problems, prejudice, limited education and social opportunities, and a political situation so deadly that the State Department has pulled out many of its own professionals." *Id.* at 5. The AAO notes that during a visit to Pakistan in 2004, the applicant's children suffered from various illnesses related to the climate and environment in Pakistan. *See letters from [REDACTED]'s E.N.T. Hospital*, undated. Additionally, the AAO notes that the applicant submitted documentation establishing that the water in his home in Pakistan is "unsatisfactory for human consumption." *Water Test Report from Mabzi International*, dated July 17, 2004. Counsel contends that the Service "incorrectly dismissed the [a]pplicant's good moral character." *Appeal Brief*, page 7, *supra*. The AAO notes that the applicant entered the United States by claiming he would be attending school, which he never did, and that is an unfavorable factor. Additionally, the years that the applicant resided in the United States without authorization and the times that he was employed without authorization are unfavorable factors. The applicant's wife states she is having "emotional trouble living without [the applicant]." *Declaration of [REDACTED]* dated November 30, 2005. Physician Assistant [REDACTED] and [REDACTED] diagnosed the applicant's wife with major depression and generalized anxiety disorder. *See psychological evaluation, Foothills Psychological Services*, dated September 9, 2004. Ms. [REDACTED] states the applicant's wife is "experiencing difficulty sleeping,

eating, and concentrating. She has also developed migraine headaches...Other symptoms of stress and anxiety[,] include palpitations, increased irritability and depressed mood.” *Letter from* [REDACTED] *M.S.*, dated August 24, 2004. The AAO notes that the applicant’s wife claims that she cannot afford to seek treatment for her depression and anxiety. *See declaration from* [REDACTED] *supra*. The applicant submitted numerous documents establishing that his and his wife’s bills were not paid after he was removed and the applicant’s wife had to file for bankruptcy. The AAO notes that the applicant suffered severe third degree burns when she was a child, which has caused her numerous medical issues, including not being able to spend a lot of time in hot climates. *See letter from* [REDACTED] *Inland Region Medical Group*, dated May 20, 2005. The AAO notes that the applicant submitted documents establishing that the average high temperature in California is 73 degrees while the average high temperature in Karachi, Pakistan, is 87 degrees. 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 wife and children, but it will be just one of the determining factors.

The record of proceedings reveals that on May 15, 1996, an immigration judge granted the applicant voluntary departure. The applicant filed an appeal with the BIA which was dismissed. The applicant failed to depart the United States as ordered, and a Warrant of Removal/Deportation was issued for the applicant on October 31, 2002. On November 20, 2002, the applicant was removed from 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. Additionally, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, for his unlawful presence in the United States.

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 BIA denial of an alien's request for discretionary voluntary departure relief. The Seventh Circuit found that the BIA's denial rested on discretionary grounds, and that the BIA 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 BIA 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 BIA'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 United States citizens, his wife and children, general hardship they may experience, a history of paying taxes, no criminal record, and the approval of a petition for alien relative. The AAO notes that the applicant's marriage to his wife occurred

after he was placed into proceedings 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 the conditions of his student visa, his failure to abide by an order of voluntary departure and removal, his inadmissibility under section 212(a)(9)(B) of the Act¹, and periods of unauthorized 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 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.

¹ The AAO notes that on May 25, 2006, the applicant filed a Form I-601 to waive his inadmissibility for unlawful presence under section 212(a)(9)(B)(II) of the Act. On January 26, 2007, the applicant's Form I-601 was denied. He did not file an appeal of that decision.