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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: APR 19 2004

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, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Egypt who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation on April 8, 1997. The applicant was ordered removed pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1), from the United States and was warned in writing that he was barred from entry to the United States for a period of five years and must apply for advanced permission if he wished to reenter the United States within the five year period. The applicant subsequently applied for and received a nonimmigrant F-1 foreign student visa from the U.S. Consulate in Toronto, Canada through misrepresentation of material facts. The applicant failed to disclose to the consular officer that he had been previously removed. On August 5, 1997, the applicant married a United States citizen in Canada. On or about August 11, 1997, the applicant reentered the United States. The applicant departed from the United States on November 18, 2000. The applicant 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 in the United States with his United States citizen wife.

The district director determined that the applicant is indefinitely excludable from the United States and denied the Form I-212 application accordingly. The AAO notes that the applicant filed two Form I-212 applications and the district director therefore rendered two decisions. *See* Decisions of the District Director, dated January 3 and January 4, 2003. The AAO combines consideration of the two applications in the instant decision.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] provides no evidence that the applicant fraudulently misrepresented facts or that he reentered the United States without inspection. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> (A) Certain aliens previously removed.-
>
> . . . .
>
> (ii) [A]ny alien . . . who-
>
> (I) Has been ordered removed under section 240 or any other provision of law . . . 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 Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factors in the application are the hardship imposed on the applicant's wife by his inadmissibility to the United States and his apparent lack of a criminal record.

The AAO notes that the applicant and his wife wed after the applicant was removed from the United States. The Seventh Circuit Court of Appeals held in *Garcia-Lopez v. INS,* 923 F.2d 72 (1991), that less weight is given to equities acquired after a deportation (removal) order has been entered. Furthermore, 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 (removal) proceedings, and with knowledge that the alien might be deported. *See Ghassan v. INS,* 972 F.2d 631 (5th Cir. 1992). The AAO finds that the applicant's wife should have been aware that the applicant had been removed from the United States when she traveled to Canada in order to marry him. Hardship to the applicant's wife is thus given diminished weight.

The unfavorable factors in the application include the applicant's entry without inspection in 1997. Counsel contends that CIS offers no evidence that the applicant reentered the United States without inspection as alleged. *See* Form I-290B, dated February 3, 2003. In the absence of further elaboration from counsel, the AAO assumes that counsel is referring to the fact that the applicant had fraudulently obtained an F-1 student visa from the U.S. Consulate in Toronto, Canada prior to his reentry and therefore, used it to obtain admission to the United States. The AAO notes that counsel provides no evidence that inspection of the applicant by an immigration officer occurred on or about August 11, 1997. Further, even if inspection occurred as alleged by counsel, the applicant's nonimmigrant visa was obtained through fraud and therefore remains an unfavorable factor in the instant application.

Additional unfavorable factors in the application include the applicant's fraudulent representations to immigration inspectors on April 8, 1997 and August 11, 1997 resulting in inadmissibility to the United States and requiring the applicant to seek an approved Waiver of Grounds of Excludability (Form I-601) in addition to the instant application. The applicant also accumulated unlawful presence while illegally present in the United States resulting in additional grounds of inadmissibility to the United States and requiring him to seek an approved Form I-601 application. The AAO notes that an applicant's prior residence in the United States is considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. *See Matter of Lee,* 17 I&N Dec. 275 (Comm. 1978). The applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country.

Further, the AAO notes that the applicant is subject to reinstatement of his removal orders.

Section 241(a) of the Act states in pertinent part:

> (5) Reinstatement of removal orders against aliens illegally reentering. - If the Attorney General [Secretary] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is *not* subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry. (emphasis added)

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The OIC's denial of the I-212 application was thus proper. Further, since the applicant is subject to reinstatement of his removal orders and is therefore not eligible for any relief under the Act, no purpose would be served in addressing the applicant's concurrently filed Application for Waiver of Grounds of Excludability (Form I-601).

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant has failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.