U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H-4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 0 4 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

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DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) 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 Jordan who entered the United States as an F-1 nonimmigrant student on or about February 1, 1988. On March 9, 1989, the applicant was convicted of First Degree Robbery, Grand Theft and Grand Theft Auto in the Superior Court of California, County of Los Angeles. On January 16, 1997, the applicant was removed from the United States pursuant to section 241(a) of the Immigration and Nationality Act (the Act). The applicant married a citizen of the United States in Jordan on January 28, 1997. 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 spouse and lawful permanent resident parents.

The director determined that the applicant is not eligible for a waiver of the grounds of his excludability from the United States. The I-212 application was denied accordingly. *Decision of the Director*, dated July 28, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) erred in finding that the applicant is not eligible for a waiver of his grounds of excludability. Counsel contends that the applicant must be given the opportunity to file a Form I-601 Waiver of Grounds of Excludability before CIS adjudicates his Form I-212 application. *Form I-290B*, dated August 28, 2003. The record does not offer any documentation to support the assertions of counsel regarding the filing of a Form I-601.

The record contains copies of documents relating to the criminal history of the applicant; a statement of the applicant, dated April 28, 1998; a copy of the marriage certificate of the applicant and his spouse; copies of alien registration cards and identity documents for the applicant's relatives; letters of support and photographs of the applicant and his family. 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.-
>
> (i) Arriving aliens. – Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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.
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> (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 AAO finds that the decision of the director is erroneous in so far as it holds that the applicant is ineligible for a waiver of the grounds of his excludability. The applicant is eligible for a waiver of his grounds of eligibility by virtue of his marriage to a United States citizen and relationship to lawful permanent resident parents. In order to obtain a waiver of his grounds of inadmissibility, the applicant needs to demonstrate extreme hardship to his spouse and/or parents pursuant to section 212(h)(1)(B) of the Act. The AAO notes that the assertions of counsel contending that the severity and nature of the crimes committed by the applicant may not be considered as unfavorable factors in adjudicating his Form I-212 application are unsupported and unpersuasive.

The favorable factors in the application are the hardship imposed on the applicant's spouse and parents by the applicant's inadmissibility to the United States and the fact that the applicant has complied with the terms of his removal and has remained outside of the United States for over seven years.

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 was aware that the applicant had been removed from the United States when she married him. Hardship to the applicant's wife is thus given diminished weight.

The unfavorable factors in the application include the applicant's conviction for crimes involving moral turpitude, which render the applicant inadmissible to the United States under section 212(a)(2)(A) of the Act and require the applicant to seek an approved Waiver of Grounds of Excludability (Form I-601), as discussed above.

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 record reflects that the applicant violated the conditions of his nonimmigrant student status while present in the United States.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The director's denial of the I-212 application was thus proper.

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.