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U.S. Citizenship and Immigration Services

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FEB 06 2004

FILE: [redacted] Office: BANGKOK, THAILAND Date:

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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 Officer in Charge, Bangkok, Thailand, 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 entered the United States on a visitor visa on June 29, 1986. The applicant filed for political asylum on February 4, 1992.[1] The applicant failed to appear for his asylum interview and was placed under deportation proceedings. On December 24, 1996, the applicant was ordered deported by an immigration judge. On January 22, 1997, the applicant's request for suspension of deportation was denied and he was granted voluntary departure until February 24, 1997. On June 30, 1999, the U.S. Court of Appeals for the Ninth Circuit dismissed the applicant's appeal. On February 12, 2002, the applicant was removed from the United States. The applicant was found deportable under section 241 of the Act. The removal order subjected the applicant to a 10-year bar of admission into the United States. 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 with his U.S. citizen wife and lawful permanent resident parents.

The officer in charge (OIC) determined that there was no evidence in the record to indicate that the adverse effects of exclusion would exceed those typically suffered by a family in this situation. The I-212 application was denied accordingly. *See* Decision of the Officer in Charge, dated April 21, 2003. The AAO notes that the Form I-292 Decision page announcing the decision states that the OIC is denying the applicant's Application for Waiver of Ground of Excludability (Form I-601). *Id.* However, as the focus of the discussion and the final determination of the OIC contained therein address the applicant's Form I-212, the AAO likewise focuses on the Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] abused its discretion in denying the applicant permission to reapply. Counsel contends that CIS misapplies outdated precedent decisions and completely ignores hardship to the applicant's qualifying family members which, he asserts, amount to extreme hardship.

In support of these assertions, counsel submits a brief as well as various court documents relating to the applicant's immigration history; a statement of the applicant's mother, undated; a letter from the pastor of [redacted] dated February 10, 2002; a statement of the applicant's father, undated and a letter from the applicant's spouse, undated.

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.

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[1] The AAO notes that counsel states that the applicant applied for political asylum on May 22, 1996 based on the date stamp appearing on the applicant's Form I-589. However, the record reflects that the applicant withdrew his application for asylum on December 6, 1995 thereby indicating a filing date before December 6, 1995.

. . . .

> (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 factor in the application is the hardship imposed on the applicant's family by his inadmissibility to the United States.

The unfavorable factors in the application include the applicant's overstay of his visitor visa; the applicant's noncompliance with the terms of voluntary departure granted by an immigration judge and the applicant's accumulation of unlawful presence resulting in inadmissibility to the United States. Although counsel contends that the applicant's over 16 years of residence in the United States are favorable to his application, 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 nor does the record demonstrate that the applicant possesses a moral character or respect for law and order.

The AAO acknowledges the applicant's submission of documentation attesting to the medical conditions of his parents who are residing in the United States. *See* Statement of [redacted] undated. While the statements of the applicant's parents indicate that he routinely assists them, the record does not establish that the applicant is the only person able to accompany his parents to their medical appointments and on routine errands.

The AAO further notes the statement of the applicant's wife, which attests to the positive influence of the applicant on her son. *See* Statement of [redacted] undated. The record reflects that the couple married after the applicant was ordered 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 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 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 remained in the United States in an illegal status and was subsequently ordered removed by an immigration judge making him subject to possible removal proceedings. Hardship to the applicant's wife is thus given diminished weight. Therefore, when

balanced against the weight of the unfavorable factors in the application, the favorable factors present in the application do not warrant a finding in favor of the applicant.

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.

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 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.