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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: MANILA, PHILIPPINES Date: FEB 19 2004

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: SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Manila, Philippines, 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 January 17, 1990 with authorization to remain until July 17, 1990. On January 7, 1994, the applicant's request for political asylum was denied. The applicant was subsequently placed in deportation proceedings. On September 19, 1996, the applicant married a U.S. citizen. In October 1998, the applicant was granted voluntary departure until November 26, 1998. On December 14, 1998, the applicant departed from the United States, one day prior to her scheduled deportation at U.S. Government expense. 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 her U.S. citizen husband.

The officer in charge (OIC) determined that the unfavorable factors in the application clearly outweigh the favorable factors. The I-212 application was denied accordingly. *See* Decision of the Officer in Charge, dated March 3, 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.* In addition, the applicant refers to "my I-601 application." *See* Letter from [redacted] dated March 26, 2003. 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 and arrives at a decision solely regarding appeal of the Form I-212.

On appeal, the applicant asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services] denied her application on factors other than her husband's hardship. In support of her assertions regarding hardship to her U.S. citizen husband, the applicant submits a letter from a physician treating the applicant's husband, dated March 18, 2003; a letter from a social worker, dated March 25, 2003; a letter from the brother-in-law of the applicant's husband, dated March 25, 2003; a letter from the applicant's husband, dated March 25, 2003 and a letter from Congressman [redacted] of California, dated March 21, 2003. The record also contains a letter from the applicant, dated December 12, 2002; copies of medical records for the applicant's husband and a copy of a handicapped placard identification card issued to the applicant's husband. 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 husband by her inadmissibility to the United States and the applicant's lack of a criminal record.

The record reflects that the applicant's husband suffers from several medical ailments owing to his status as a diabetic. *See* Letter from [redacted] MD, dated March 18, 2003. While his condition is lamentable, the record also reflects that the applicant married her U.S. citizen husband after she was first placed in deportation proceedings. 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 husband 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 her subject to possible removal proceedings. Hardship to the applicant's husband will thus be given diminished weight.

The unfavorable factors in the application include the applicant's overstay of her visitor visa; the applicant's noncompliance with the terms of voluntary departure; the applicant's admission to an immigration officer that she applied for asylum benefits knowing she was not eligible for them and the applicant's accumulation of unlawful presence resulting in inadmissibility to the United States which requires her to additionally seek an approved Waiver of Grounds of Excludability (Form I-601). 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 her disregard for the immigration laws of this country.

The applicant has not established that the favorable factors in her 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 her eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant failed to establish that she warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.