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U.S. Citizenship
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Services

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[redacted]

MAR 23 2004

FILE: [redacted] Office: MANILA, PHILIPPINES 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: SELF-REPRESENTED

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 or about July 25, 1991 by presenting an immigrant visa issued at the American Embassy, Manila, Philippines on July 10, 1991. The applicant was subsequently found to be inadmissible 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 procured admission to the United States by fraud or willful misrepresentation of a material fact. On July 19, 1996, the applicant's petitions for political asylum and suspension of deportation were dismissed. On March 10, 1998, the applicant was removed from the United States. The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. 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 evidence of record did not indicate that the adverse effects of exclusion would exceed that typically suffered by a family in this situation. The application was denied accordingly. *See* Decision of the Officer in Charge, dated May 29, 2003.

On appeal, the applicant asserts that she wants to join her husband and daughter in the United States. *See* Form I-290B, dated June 19, 2003. 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 factor in the application is the applicant's marriage to a U.S. citizen and her lack of a criminal record.

The record reflects that the applicant's husband is a naturalized citizen of the United States. The record further reflects that the couple divorced on May 15, 1989. Based on this first marriage, the applicant obtained an immigrant visa and entered the United States on or about July 25, 1991. However, at the time of her entry, the applicant and her husband were already divorced. On July 19, 1996, the applicant's petitions for political asylum and suspension of deportation were denied. The applicant and her husband remarried on August 9, 1996 in Reno, Nevada. On March 10, 1998, 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 husband should have been aware that the applicant entered the United States in an illegal status and was ordered removed making her subject to possible removal proceedings. Hardship to the applicant's husband will thus be given diminished weight. Further, the AAO notes that the record does not establish the immigration status of the applicant's daughter and it does not demonstrate hardship to the applicant's daughter as a result of the applicant's absence.

The unfavorable factors in the application include the fraudulent misrepresentations made by the applicant to a consular officer in order to obtain a visa for entry into the United States; the applicant's entry into the United States with a fraudulent visa; her resulting inadmissibility which requires her to seek an Application for Waiver of Ground of Excludability (Form I-601) and the applicant's removal from the United States at government expense. 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.