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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VIENNA, AUSTRIA Date: MAY 20 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: 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, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Bulgaria who was found to be inadmissible to the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien who departed the United States while an order of removal was outstanding. The applicant was ordered removed from the United States pursuant to section 241(a)(1)(C) of the Act, 8 U.S.C. § 1231(a)(1)(C), and was warned in writing that he was barred from entry to the United States for a period of ten years and must apply for advanced permission if he wished to reenter the United States within the ten year period. The applicant is the beneficiary of a Form I-129F Petition for Alien Fiancé(e) approved on March 19, 2003. The applicant departed from the United States on August 3, 2002. 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 fiancée.

The officer in charge determined that the unfavorable factors in the application outweighed the favorable factors. The I-212 application was denied accordingly. The AAO notes that the Form I-292 announcing the decision of the OIC indicates that the Application for Waiver of Grounds of Excludability (Form I-601) is denied, however the decision itself focuses on the applicant's Form I-212 application. Therefore, the AAO addresses only the Form I-212 application on appeal. *See* Decision of the Officer in Charge, dated September 3, 2003.

On appeal, the applicant asserts that he is the beneficiary of an approved Form I-129F and that during all of his prior immigration proceedings, his mother made decisions on his behalf and therefore, he should not be held accountable for her mistakes.

In support of these assertions, the applicant submits a brief, dated September 29, 2003; a letter from his fiancée, dated September 28, 2003; a letter from a physician treating the applicant's fiancée, dated February 10, 2003; a letter from the employer of the applicant's fiancée; a letter from the applicant's mother, dated September 29, 2003; a copy of a Bulgarian passport issued to the applicant; a copy of a New York State Learner Permit issued to the applicant; several letters of support; a copy of the fiancé petition letter written by the applicant's fiancée, dated September 29, 2002; a letter from a physician treating the applicant's fiancée, dated February 25, 2004; letters from the applicant's fiancée, dated March 15, 2004 and March 6, 2004, respectively; copies of two letters written to congressional representatives by the applicant's fiancée, dated February 24, 2003 and December 21, 2003, respectively and six color photographs of the applicant and his fiancée together. 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-.

. . . .

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal ... 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 include the hardship imposed on the applicant's fiancée by his inadmissibility to the United States.

The AAO notes that the applicant and his fiancée became engaged 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 fiancée was aware that the applicant had been removed from the United States at the time of the filing of the Form I-129F Petition for Alien Fiancé(e). The situation of the applicant and his fiancée parallels the situation confronting the married couple presented in *Ghassan* and therefore, hardship to the applicant's fiancée is given diminished weight.

Other favorable factors in the application include the applicant's apparent lack of a criminal record and his continuous efforts to comply with the immigration laws of the United States in order to obtain legal residency in this country. The AAO notes that when the applicant exhausted all legal options for his continued stay in

the United States, he complied with his removal order and departed from the country. The AAO further notes that the applicant cannot be held accountable for any immigration violations committed on the applicant's behalf by his mother while he was a minor under her care. The record reflects that the applicant and his mother returned to Canada prior to the expiration of the voluntary departure order issued to them. The applicant's reentry to the United States in 1999 occurred owing to the denial of his request for asylum in Canada. From the time that the applicant reentered the United States in 1999 until he departed in August 2002, he was attempting to obtain legal status in this country.

The unfavorable factors in the application include the applicant's accrual of unlawful presence while in the United States resulting in inadmissibility and requiring the applicant to seek an approved Waiver of Grounds of Excludability (Form I-601) in addition to the instant application. The AAO notes that despite the assertions of the applicant's mother, unlawful presence does accrue during time in proceedings. *Letter from Adelina Chaprazova-Kopp*, dated September 29, 2003. The applicant accrued time in unlawful presence from May 31, 2001 until August 3, 2002, excluding the brief time during which the applicant had an asylum application pending. The applicant, therefore, accrued unlawful presence for a period of longer than one year, subjecting him to a 10-year bar under section 212(a)(9)(B)(ii) of the Act unless he obtains a waiver pursuant to section 212(a)(9)(B)(v) of the Act. The AAO notes that, at this time, the record does not establish that the applicant has a qualifying relative for purposes of waiver proceedings.

The applicant has established that the favorable factors in his application outweigh the unfavorable factors. The OIC's denial of the I-212 application was thus improper in its result. The appeal will be sustained and the application will be approved.

ORDER: The appeal is sustained and the application is approved.