U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

H4

FILE: [redacted] Office: ATHENS, GREECE Date: AUG 02 2005

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission after Removal into the United States after Deportation 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]

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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 was denied by the Acting Officer in Charge (AOIC), Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Iraq who was admitted into the United States on January 20, 1997 as a K-1 Fiancée, the terms of which required her to marry her fiancé, [redacted] (Mr. [redacted] within 90 days of entry. The applicant did not marry Mr. [redacted] The applicant is the beneficiary of an approved I-130 Petition for Alien Relative filed by her mother. The applicant filed an affirmative asylum application on September 12, 1997. The Chicago Asylum Office issued the applicant a Notice to Appear (NTA) and referred the asylum application to the Executive Office for Immigration Review (Immigration Court). An immigration judge (IJ) denied the applicant's asylum application on February 25, 2000. The applicant appealed the denial to the Board of Immigration Appeals (BIA), which affirmed the IJ's denial on March 28, 2002. The applicant departed the United States on October 11, 2003. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She now 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 travel to the United States and reside with her U.S. citizen parents.

The AOIC determined that the applicant is inadmissible pursuant to section 212(a)(9)(A) of the Act and that the unfavorable factors in the applicant's case outweighed the favorable factors. The AOIC denied the applicant's I-212 Application for Permission to Reapply for Admission After Deportation or Removal accordingly. Decision of the Officer in Charge, Athens, Greece, dated October 4, 2004.

On appeal, counsel contends that the Examiner erred in:

1) Relying on case law primarily related to the effect of the equities after an acquired immediate relative marriage in deportation proceedings;
2) Concluding that the applicant clearly showed flagrant disregard for the immigration laws of the United States;
3) Characterizing the alien beneficiary as a system abuser.

In support of the appeal, counsel filed a brief; a letter from Mr. [redacted] a letter from Mr. [redacted] former spouse; Mr [redacted] divorce decree; a transcript of an ABC News special report on Iraq from 1997; an email from the applicant's prior attorney [redacted] Mr. [redacted] a letter from the Michigan State Grievance Board addressed to Mr. [redacted] medical records for the applicant's father; letters verifying the applicant's employment in the United States; copies of the applicant's work authorization cards; and letters in support of the applicant. The entire record was considered in rendering this decision.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

> (II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

In *Matter of Tin,* 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

> The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin,* the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

> [T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] . . . . In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

The favorable factors in this matter are as follows. First, the applicant has significant family ties in the United States. Her parents, sister, nephews and niece are United States citizens and live in the United States. Second, the applicant lived with her elderly (mid-sixties) parents and assisted them financially and with daily life activities. The applicant's father has been diagnosed with kidney cancer, and the applicant helps to care for him. Third, the applicant worked as an engineer in the United States from May 2000 until October 10, 2003. The record indicates that the applicant had valid work authorization for all but the last five months of this period. As indicated below, the applicant reasonably believed that her appeal to the BIA was still pending. Fourth, the applicant has no criminal record, and the record contains several letters commending the

applicant for her work and/or character. Fifth, the applicant is the beneficiary an I-130 that was approved on October 14, 1998.

The AAO finds that the unfavorable factors are as follows. First, the terms of the applicant's K-1 Visa required her to marry Mr. [redacted] within 90 days of her arrival in the United States on January 20, 1997, yet she never married him. However, the breakdown of the proposed marriage does not appear to be the applicant's fault. Counsel submitted a letter from Mr. [redacted] former spouse in which she described how she threatened to challenge the custody of their children if Mr. [redacted] married the applicant, who had religious views that the former spouse opposed. Mr. [redacted] broke off the engagement. Second, the applicant applied for asylum on September 12, 1997, which means she had no legal status for approximately five months. The AAO finds that this was not an unreasonable delay in filing for asylum, especially given the evidence submitted by counsel showing a worsening of country conditions in Iraq during 1997. Third, on March 29, 2002 the BIA denied the applicant's appeal of her asylum claim, yet the applicant did not depart the United States until October 11, 2003. Counsel submitted evidence (a email from the applicant's former attorney, Mr. [redacted] and a letter of admonishment to Mr. [redacted] from the Michigan Attorney Grievance Commission) indicating that the applicant did not receive notice of the BIA decision until she had already left the United States to attend a visa interview at the United States Consulate in Amman, Jordan.

The AAO concludes that the applicant has established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.