

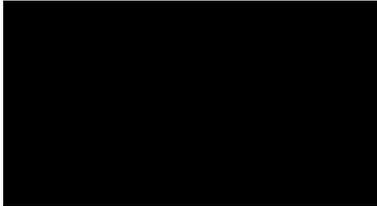
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



HA

FILE:



Office: VIENNA, AUSTRIA

Date: AUG 10 2005

IN RE:

Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal was denied by the Officer in Charge, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Romania who entered the United States as a non-immigrant visitor for pleasure on December 5, 1990, with an authorized period of stay until June 4, 1991. On January 24, 1991, the applicant applied for asylum with the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)). On February 21 1997, the applicant was interviewed for asylum status and was subsequently referred to an Immigration Judge for a court hearing. On December 11, 1998, the applicant failed to appear for a deportation hearing and was subsequently ordered deported in absentia by an Immigration Judge pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act). On the same day a Warrant of Deportation (Form I-205) was issued. On July 30, 1999, the applicant married a subsequently naturalized U.S. citizen who filed a Petition for Alien Relative (Form I-130) on her behalf. The applicant appeared at a CIS office on August 30, 2000, for a scheduled interview regarding her application for adjustment of status. Based on the Form I-205, an Order of Supervision was issued and the applicant was removed from the United States on September 6, 2000. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 spouse.

The Officer in Charge determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *See Officer in Charge Decision* dated April 10, 2003.

The AAO notes that the Notice of Denial (Form I-292) indicated "... Application for Waiver of Grounds of Excludability (I-601) be denied for the following reasons: SEE ATTACHMENTS." The application in the present matter is for permission to reapply for admission, not a waiver of inadmissibility. The AAO finds this error to be harmless since it does not affect the outcome of the decision. In the attachment and his decision the Officer in Charge adjudicated the Form I-212 pursuant to section 212(a)(9)(A)(iii) of the Act. The I-601 waiver application was rejected based on the denial of the Form I-212.

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 has consented to the aliens' reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar, with limited exceptions, to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal the applicant states that during her presence in the United States she respected all the laws of the United States. In addition she states that she was legally employed having renewed her work permit every year, and that she filed tax returns. Furthermore the applicant states that her attorney did not inform her of her deportation hearing of December 11, 1998, and that is the only reason why she did not attend the hearing. The applicant states that her marriage was not a marriage of special interest and requests that the application be granted in order for her to be together with her spouse so they can support each other.

The applicant's statement regarding her reason for not attending her deportation hearing is not persuasive. The applicant appeared at several Master Calendar hearings with the Immigration Judge. The record of proceedings reflects that after the issuance of an Order to Show Cause and Notice of Hearing (OSC) the applicant moved from the address listed on the OSC. It was the applicant's responsibility to notify the service of her change of address, which she did not do.

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 or Removal:

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 be a condonation of the alien's acts and could encourage others to enter without being admitted to work in the United States 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 court held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, 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 proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998) need not be accorded great weight by the district director in considering discretionary weight. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper.

The favorable factors in this matter are the applicant's family tie to a U.S. citizen, her spouse, the approval of a petition for alien relative, the absence of a criminal record and the fact that she filed tax returns.

The AAO finds that the unfavorable factors in this case include the applicant's failure to appear for deportation proceedings, her failure to depart the United States after a final removal order was issued by an Immigration Judge, her employment without authorization part of her time in the United States and her unlawful presence in the United States from December 11, 1998, the date the Immigration Judge ordered her deported, and August 30, 2000, the date she was removed from the United States. The Commissioner stated in *Matter of Lee*, *supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

The applicant's actions in this matter cannot be condoned. Her equity, marriage to a U.S. citizen, gained after a deportation order was issued can be given only minimal weight. The applicant has not 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 failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.