



U.S. Citizenship  
and Immigration  
Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**



*H4*

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 29 2006**

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.

Robert P. Wiemann, Chief  
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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Syria who entered the United States without a lawful admission or parole on April 27, 1988. The Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant and an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was served on him on April 28, 1988. The applicant was placed in custody and on April 29, 1988, he was released on a \$3,000 bond. On November 14, 1988, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589) with the office of the immigration judge. On February 10, 1989, an immigration judge denied the applicant's application for asylum and withholding of deportation and ordered the applicant deported pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act), for entering the United States without inspection. The applicant filed an appeal with the Board of Immigration Appeals (BIA) which was dismissed on November 17, 1992, and on the same date a Warrant of Deportation (Form I-205) was issued. On December 30, 1992, a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that he appear at the San Francisco, California district office in order to be removed from the United States. The applicant failed to surrender for deportation or depart from the United States. On June 5, 2002, the applicant was apprehended and based on the Form I-205, he was removed from the United States on July 8, 2002. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. spouse. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 his U.S. citizen spouse.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones and denied the Form I-212 accordingly. See *Director's Decision* dated September 26, 2005.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is signed by the applicant's spouse and not the applicant himself. Therefore, the AAO will not be sending a copy of the decision to the attorney mentioned on the Form G-28, but this office will accept the submitted information.

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 alien 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's 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 in others, (2) has added a bar 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 from being present in the United States without lawful admission or parole.

On appeal, counsel submits a brief and documentation previously submitted with the filing of the Form I-212. In his brief, counsel states that the Director abused his discretion in denying the Form I-212 and failed to adequately consider all favorable factors present in the applicant's case. Counsel states that the applicant is married to a U.S. citizen, has an approved Form I-130, and desires to reenter the United States in order to join his wife and reside permanently. Counsel states that the Director erroneously would not consider the applicant's marriage as a positive factor or equity because it was entered into after deportation. According to counsel, there is no indication in the statutory framework, regulations or precedent case law that the time of a marriage would have any bearing on whether it should be considered a positive factor or not. Counsel refers to a case in which an applicant was granted permission to reapply for admission after deportation after it was established that he was a person of good moral character, had no police record, had maintained a bona fide family relationship with his Lawful Permanent Resident spouse and U.S. citizen children, and as the applicant in the present case, married his spouse after being deported. In addition, counsel refers to the decision in *Salcido-Salcido v. INS*, 138 F.3d 1292(9<sup>th</sup> Cir. 1998) that states that separation from family may be the most important single hardship factor. Counsel further states that the applicant's spouse is suffering emotional and financial hardship due to her separation from the applicant. Additionally, counsel states that the BIA has determined that an individual's immigration violations did not constitute a lack of good moral character. Finally, counsel requests that the Form I-212 be granted because the applicant is a person of good moral character, does not have a criminal record and the hardship his spouse will suffer greatly outweighs any unfavorable factors in this matter.

Counsel's assertions are not persuasive. In the present case, the Director did not find that the applicant lacked good moral character. The Director denied the Form I-212 after determining that the unfavorable factors outweigh the favorable ones, as required by statute. In addition, as will be discussed, there is caselaw establishing that less weight is given to equities acquired after an order of deportation.

*Salcido-Salcido*, referred to by counsel, dealt with suspension of deportation where extreme hardship is taken into consideration. Unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility

for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's spouse, but it will be just one of the determining factors.

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 court held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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 applicant, in the present matter, married his U.S. citizen spouse on March 29, 2004, approximately sixteen years after he was placed in deportation proceedings, over eleven years after the BIA dismissed his appeal, and over one and one half years after he was removed from the United States. The applicant's spouse should reasonably have been aware at the time of their marriage of the possibility of his not being allowed

into the United States. He now seeks relief based on that after-acquired equity. Therefore, hardship to his spouse will not be accorded great weight.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his U.S. citizen spouse, an approved Form I-130, the prospect of general hardship to his spouse and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial illegal entry into the United States on April 27, 1988, his failure to depart the United States after a deportation order was issued by an immigration judge and after the BIA reaffirmed the order, his employment without authorization and his lengthy presence in the United States without a lawful admission or parole. 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. His equity, marriage to a U.S. citizen, gained after he was placed in deportation proceedings and after he was deported from the United States, 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 the applicant 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.