



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



FILE:

Office: VERMONT SERVICE CENTER

Date: **DEC 13 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.

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

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, Vermont 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 Ghana who on November 28, 1993, was admitted into the United States as a non-immigrant visitor with an authorized period of stay until December 30, 1993. The applicant overstayed his authorized period of stay and on March 10, 1997, he married a U.S. citizen who subsequently filed a Petition for Alien Relative (Form I-130) on his behalf. On July 22, 1997, the applicant was granted Lawful Permanent Resident (LPR) status on a conditional basis pursuant to section 216(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 11866(a). On July 8, 1999, the applicant filed a Petition to Remove the Condition on Residence (Form I-751). On February 2, 2000, the District Director determined that the applicant entered into the marriage for the purpose of obtaining an immigration benefit and denied the Form I-751 accordingly. On the same date a Notice to Appear (NTA) for a removal hearing before an immigration judge was issued. On January 11, 2001, the applicant divorced his spouse and on March 13, 2001, he married a now naturalized U.S. citizen. On April 4, 2002, the applicant failed to appear for a removal hearing and an immigration judge subsequently ordered him removed, in absentia. The applicant filed a Motion to Reopen (MTR) his removal proceedings, which was denied by the immigration judge on March 17, 2003. An appeal filed with the Board of Immigration Appeals (BIA) was rejected as untimely filed on September 8, 2003, and a MTR was denied on February 3, 2004. On March 19, 2004, Immigration and Customs Enforcement (ICE) agents apprehended the applicant, and on May 10, 2004, he was removed from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen 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 and children.

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 August 12, 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)(A) of the Act states in pertinent part:

(A) Certain aliens 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; (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 deterring 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, counsel submits a brief in which he states that the applicant's failure to appear for his removal hearing is not a significant immigration violation. In addition, counsel states that the applicant is married to a U.S. citizen and has three U.S. citizen children who are suffering extreme hardship as a result of his removal. Additionally, counsel asserts that the fact that the applicant was removed more than a year ago and the fact that he was a conditional resident since May 1977 and continued to pursue permanent resident status until he was removed should be considered for a favorable decision.

The AAO conducts the final administrative review and enters the ultimate decision for CIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in de novo review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. See *Helvering v. Gowran*, 302 U.S. 238, 245-246 (1937); see also, *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003).

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. To recapitulate, on February 2, 2000, the applicant's Form I-751 was denied because it was determined that he entered into a marriage for the primary purpose of obtaining an immigration benefit. Therefore, the applicant is subject to section 204(c) of the Act, 8 U.S.C. § 1154(c).

Section 204(c) of the Act states in pertinent part that:

Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General [now Secretary, Homeland Security, "Secretary"] to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8 C.F.R. § 204 (a)(1)(ii) states in pertinent part:

(a) Petition for a spouse.

(1) Eligibility. A United States citizen or alien admitted for lawful permanent residence may file a petition on behalf of a spouse.

(ii) Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

The AAO notes that the record of proceeding includes an affidavit submitted by the applicant's spouse, [REDACTED], dpo [REDACTED], Ghana. In her affidavit, the applicant's spouse states that she first met the applicant in 1998. The record contains a Form G-325, Biographic Information, dated March 18, 1997, signed by the applicant and a divorce decree from Ghana. In the Form G-325 the applicant states that he was previously married to [REDACTED] born on September 25, 1971. According to the divorce decree [REDACTED] father's name is [REDACTED]. A Form G-325 signed by the applicant's spouse on March 13, 2001, reflects that her father's name [REDACTED].

The AAO finds that the evidence contained in the applicant's Service file clearly establishes that the applicant was previously involved in a sham marriage for immigration purposes. As such, the applicant was clearly not eligible to be approved as the beneficiary of a Form I-130 filed by his present wife.<sup>1</sup> The AAO notes that in the present case, Citizenship and Immigration Services (CIS) must follow the regulations and statutory law

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<sup>1</sup> The AAO notes further that, as a general matter, the applicant is statutorily ineligible for approval of any visa petition filed on his behalf.

provided for in section 204 of the Act, and that, given the previous determination of a sham marriage, CIS had no authority to approve a Form I-130 on behalf of the applicant.<sup>2</sup>

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

A review of the documentation in the record of proceeding reflects that the applicant is subject to the provision of section 204(c) of the Act, which is very specific and applicable. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Accordingly, as the applicant is statutorily inadmissible to the United States, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The AAO notes that based on the evidence in the record, a CIS revocation of the applicant's present I-130 visa petition would be proper. See Section 205 of the Act, 8 U.S.C. § 1155.