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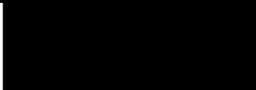
U.S. Citizenship  
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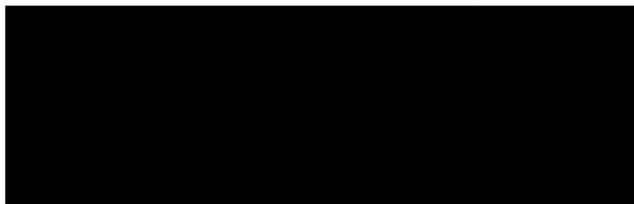
Applicant:



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:



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 cursive script, 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, 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 the Philippines who was admitted into the United States on September 14, 1991, as a non-immigrant visitor for pleasure with an authorized period of stay until December 24, 1992. On July 29, 1992, the applicant filed a Request for Asylum in the United States (Form I-589) with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). On October 20, 1992, the applicant was interviewed for asylum status. On March 22, 1994, her application was denied and on the same date an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was issued. On March 8, 1995, the applicant failed to appear for the deportation hearing and she 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), for having remained in the United States longer than permitted. The applicant failed to surrender for removal or depart from the United States and a Warrant of Deportation (Form I-205) was issued on May 25, 1995. The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) filed by her 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). 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 remain in the United States and reside with her 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 October 22, 2005.

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 for 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 asserts that the Director's decision undermines the regulation at 8 C.F.R. 212.2 which allows all persons ordered deported to seek permission to re-enter regardless of unlawful presence. In addition, counsel refers to the decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004) in which the Ninth Circuit Court of Appeals held that a denial of an application on the ground that the applicant had to apply from abroad was a legal error. Counsel states that an alien illegally in the United States is permitted to file a Form I-212. Counsel alleges that the applicant has established that she deserves a second chance based on her equities. Counsel states that the applicant was ordered deported nearly ten years ago and has resided in the United States for over 14 years. Additionally, counsel states that the Director alleges that the applicant lacks reformation or rehabilitation while ignoring the fact that she has no criminal history, she volunteers at the Department of Veterans Affairs Care Center, she and her husband contribute to their church and she has strong support from friends and family. Furthermore, counsel states that although the applicant is accountable for overstaying her visitor's status and failing to appear at her deportation proceedings, her favorable equities outweigh her past transgressions. Counsel compares the applicant's situation to *Matter of Carbajal*, 17 I&N Dec. 272 (BIA 1978) in which the applicant had entered the United States illegally on four occasions without inspection or parole. Counsel further refers to the letters of recommendation submitted by family and friends regarding her good moral character and her need to remain in the United States. Counsel alleges that the Director did not consider all the relevant factors and exhibits presented in the case. Counsel asserts that if the applicant is forced to return to the Philippines both she and her spouse would suffer severe hardship. She would be separated from her husband and daughter, she would be faced with economic as well as emotional devastation in light of the abysmal conditions in the Philippines, and, because of her age, she would not be able to find employment and would have to depend on her husband for money. Finally, counsel states that the applicant warrants a favorable exercise of discretion because she contributes positively to her community, her spouse and daughter would be devastated by the separation, and she would be psychologically, emotionally as well as economically debilitated by the separation from her family.

While *Perez-Gonzalez* allows for the filing of a Form I-212, it does not guarantee approval. The applicant, in the present case, was not precluded from filing a Form I-212. The applicant filed a Form I-212 that was denied by the Director after determining that the unfavorable factors outweighed the favorable factors.

In *Matter of Carbajal*, the applicant illegally entered the United States on four different occasions, three of which resulted in voluntary departures. The AAO notes that the applicant's illegal entries were found to be the only negative factors. Each application must be viewed independently and all positive and negative factors must be considered.

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 notes that the applicant's daughter counsel refers to, is an adult, married and resides with her family and not with the applicant. 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 be a condonation of the alien's acts and could encourage others to enter without being admitted and work in the United States unlawfully. *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 her U.S. citizen spouse on February 19, 1995, over one year after she was placed in deportation proceedings. The applicant's spouse should reasonably have been aware at the time of their marriage of the applicant's immigration violations and the possibility of her being deported. She now seeks relief based on that after-acquired equity. Therefore, hardship to her 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, her U.S. citizen spouse, an adult daughter, and other extended family members, an approved Form I-130, the prospect of general hardship, and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's overstay after her initial lawful admission, her failure to appear for deportation proceedings, her periods of unauthorized employment and her lengthy presence in the United States without authorization. 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 an LPR, gained after she was placed in deportation proceedings 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 eligibility 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.