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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

H4

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: JUL 03 2007

IN RE: [redacted]

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:

[redacted]

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who, on March 1, 1993, filed an Application for Asylum or Withholding of Removal (Form I-589). During the applicant's asylum interviews he admitted that he originally entered the United States by presenting a fraudulent passport in December 1992. On June 2, 1994, the Form I-589 was referred to an immigration judge and the applicant was placed into proceedings. On October 28, 1996, the immigration judge ordered the applicant removed from the United States *in absentia*. On May 7, 1997, the applicant filed a motion to reopen proceedings with the immigration judge. The applicant stated that the motion to reopen should be granted because he had departed the United States on August 21, 1996, due to the death of his mother. He stated that he filed the motion to reopen after he reentered the United States on December 30, 1996. On May 7, 1997, the applicant's motion to reopen was denied. The applicant filed a motion to reopen with the Board of Immigration Appeals (BIA). On October 18, 1999, the BIA denied the applicant's motion to reopen. On November 10, 1999, a warrant for the applicant's removal was issued. The applicant filed a *habeas corpus* suit with the United States Northern District Court for Illinois (District Court). On December 14, 1999, the applicant married his wife, [redacted]. On January 11, 2000, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by [redacted] On May 19, 2000, the District Court dismissed the applicant's *habeas corpus* suit. On October 24, 2001, the applicant filed the Form I-212. On October 15, 2002, the Form I-130 was approved. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 remain in the United States and reside with his U.S. citizen spouse and child.

The district director determined that he did not have jurisdiction over the Form I-212 because the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who obtained entry to the United States by fraud and needed to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) simultaneously with the Form I-212 with the U.S. consulate that has jurisdiction over his foreign residence. The district director determined that the applicant had to reside outside the United States in order to file the Form I-212 and denied the Form I-212 accordingly. *See District Director's Decision* dated March 21, 2005.

On appeal, counsel contends that the applicant is eligible to file the Form I-212 from within the United States. Counsel contends that the application should be reopened, remanded and the applicant be permitted to apply for adjustment of status *See Counsel's Brief,* submitted August 29, 2005. In support of his contentions, counsel submits only the referenced brief and copies of case law. The entire record was reviewed in rendering a decision in this case.

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 who 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.

The record of proceedings indicates that the applicant entered the United States by fraud in 1992 and was ordered removed in 1996. By departing the United States prior to conclusion of proceedings the applicant executed a self-removal. The applicant thereafter made at least two entries into the United States by fraud. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and, therefore, must receive permission to reapply for admission.

The record reflects that [redacted] is a native of India who became a lawful permanent resident in 1984 and a naturalized U.S. citizen in 1992. The applicant and [redacted] have a five-year old daughter and a three-year old son who are U.S. citizens by birth. The applicant and [redacted] are in their 30's.

On appeal, counsel asserts that, under *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), an applicant may file the Form I-212 while still within the United States. The AAO finds that the district director erred in finding that he did not have jurisdiction over the Form I-212 and that the applicant is required to remain outside the United States prior to filing the Form I-212. The regulation cited by the director, 8 C.F.R. § 212.2(d), applies to applicants for immigrant visas overseas, not to applicants for adjustment of status, as is the case in this proceeding. The regulation at 8 C.F.R. § 212.2(e) provides that an applicant for adjustment of status may file an application for permission to reapply for admission with the district director having jurisdiction over the place where the applicant resides in the United States. The AAO will therefore review the Form I-212 on its merits.

On appeal, counsel requests that any and all grounds under which the applicant may be inadmissible be waived through the granting of the applicant's Form I-212. The record reflects that the applicant obtained entry into the United States by fraud in 1992. The record further reflects that the applicant entered the United States by presenting a nonimmigrant student visa on September 18, 1994, and December 30, 1996, though he never pursued his studies and was entering the United States to resume his residence and employment in the United States. On July 30, 1999, the applicant obtained entry into the United States by presenting a nonimmigrant visitor visa, while again entering the United States to resume his residence and employment in the United States. As such, the applicant obtained entry into the United States by fraud in 1992, 1994, 1996 and 1999. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for obtaining entry into

the United States by fraud. In order to obtain a waiver of this ground of inadmissibility an applicant must file a Form I-601. *See* 8 C.F.R. § 212.7. A waiver of this ground of inadmissibility will not be addressed in the current proceeding.

The applicant, in his affidavit, states that he now has more responsibilities because he must care for his spouse and child. He states that if he were to leave the United States it would cause a significant hardship to his wife and child because he supports them financially and emotionally. He states that his newborn daughter is going to need both her mother and father. He states that he and his wife are committed to caring for their daughter and providing her with the best education and possible life in the United States

The AAO notes that, on June 14, 1995, the applicant was arrested for battery. The record does not reflect the outcome of these charges.

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 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 7th Circuit Court of Appeals 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-Munoz 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 AAO finds that the above-cited precedent legal decisions establish the general principle that "after-acquired equities" are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

The favorable factors in this matter are the applicant's U.S. citizen spouse, two U.S. citizen children, the general hardship to the family members, and an approved immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's multiple fraudulent entries into the United States, his failure to appear at removal hearings, his multiple fraudulent reentries after having been ordered removed from the United States and his inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

The applicant in the instant case has multiple immigration violations. The AAO finds that the applicant's marriage, birth of his children, and approval of his immigrant petition occurred after the applicant was placed into proceedings. The AAO finds these factors to be "after-acquired equities" and that any favorable weight derived from the applicant's marriage, birth of his children, or his approved immigrant visa petition must be accorded diminished weight. The totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the laws of the United States, and that the favorable factors in the present matter are outweighed by the unfavorable factors.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish 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.