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U.S. Citizenship and Immigration Services

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MAY 01 2007

FILE: [redacted] Office: ATHENS, GREECE Date:

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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 application for permission to reapply for admission after removal was denied by the Acting Officer in Charge, Athens, Greece and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jordan who entered the United States without inspection on or about March 14, 1997. On April 21, 1997, an Immigration Judge ordered the applicant removed from the United States in absentia and on June 22, 2001, he was removed to Jordan. The applicant has been found to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He now 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 stepchildren.

The Acting Officer in Charge determined that the favorable equities in the applicant's case did not outweigh the applicant's long-term lack of respect for U.S. immigration law. The Acting Officer in Charge denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. The Acting Officer in Charge denied his waiver application under section 212(a)(9)(B)(v) of the Act, returned the Form I-601, Application for Waiver of Grounds of Inadmissibility, and refunded the application fee. *Decision of the Acting Officer in Charge* dated February 4, 2005.

On appeal, counsel requests that the AAO reconsider the applicant's case because of the extreme hardship his absence is causing his two stepchildren. *Counsel's Letter*, dated March 31, 2005. Counsel also requests an oral argument due to the extreme nature of the hardship and unique fact pattern and history of this matter. *Form I-290B*, dated March 31, 2005.

The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. The Citizenship and Immigration Service (CIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, the unique factors and issues of law can be adequately addressed in writing. Consequently, the request is denied.

The record indicates that the applicant was previously removed from the United States on June 22, 2001.

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 [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

The applicant is seeking permission to re-apply for admission less than 10 years from the date of his previous removal on June 22, 2001. Thus, the applicant is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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.*

In counsel's appellate brief, she explains that the applicant was married to a U.S. citizen in December 2000, three years after his final removal order was entered by an immigration judge. She states that the applicant's spouse and stepchildren are suffering hardship as a result of being separated from the applicant. Counsel states that the applicant's spouse's former husband died of cancer and her two children from that marriage have grown very close to the applicant. The record indicates that after the applicant's removal, his spouse and her children relocated to Jordan in August 2001 and remained in Jordan until February 2004. The applicant's spouse and stepchildren returned to the United States because the applicant's spouse's father was terminally ill. Counsel outlines the severe hardships the family faced while living in Jordan. She states that the

applicant's spouse was not authorized to work in Jordan; the applicant only earned $15.00 a day as a truck driver; the children were unable to continue school at the English school because the cost was too high; the spouse and children did not speak Arabic; the spouse and children felt unsafe because they were Americans in an anti-American climate; the family was forced at times to resort to refugee camps for food; and the family lived in various refugee camps on occasion when work was not available.

The AAO notes that no documentation was submitted to support the statements regarding the applicant's life in Jordan. No evidence was submitted to show that the applicant, his spouse and her children were forced to resort to refugee camps for food and shelter. Furthermore, no documentation was submitted to show the extent of the applicant's family's emotional suffering.

In addition, the applicant's marriage to a U.S. citizen occurred three years after an immigration judge initially ordered the applicant removed in April 1997. Thus, the applicant's ties to his U.S. citizen spouse and her children are after acquired equities and as such must be given less weight in reviewing the applicant's case.

The AAO finds that various legal decisions have repeatedly upheld the *general principal* that less weight is given to *equities* acquired by an alien after an order of removal has been issued ("less weight principle").

In *Garcia-Lopez v. INS,* 923 F.2d 72 (7th Cir. 1991), for example, the Seventh Circuit Court of Appeals (Seventh Circuit) reviewed a Board of Immigration Appeals (Board) denial of an alien's request for discretionary voluntary departure relief. The Seventh Circuit found that the Board's denial rested on discretionary grounds, and that the Board had weighed all of the favorable and unfavorable factors and stated the reasons for its denial of relief. The Seventh Circuit affirmed the general principle that less weight may be accorded to equities acquired after an order of deportation is issued, and the Seventh Circuit concluded that the Board had not abused or exercised its discretion in an arbitrary or capricious manner.

In *Bothyo v. Moyer,* 772 F.2d 353, 357 (7th Cir. 1985), the Seventh Circuit reviewed a discretionary stay of deportation case that weighed and balanced favorable and unfavorable factors. The Seventh Circuit stated that an alien's marriage to a lawful permanent resident did not necessitate the granting of a stay of deportation because the marriage occurred after deportation proceedings had commenced and after an Order to Show Cause had been issued against the alien. The Seventh Circuit then affirmed the general principle that an "after-acquired equity" need not be accorded great weight by a district director in his or her consideration of discretionary weight.

In *Carnalla-Munoz v. INS,* 627 F.2d 1004, 1006 (9th Cir. 1980), the Ninth Circuit Court of Appeals (Ninth Circuit) reviewed a discretionary suspension of deportation case. The Ninth Circuit affirmed the principle that post-deportation equities are entitled to less weight in determining hardship. In doing so, the Ninth Circuit referred to the 1980 decision, *Wang v. INS,* 622 F.2d 1341, 1346 (9th Cir. 1980) (overruled on unrelated grounds). In *Wang,* the alien sought discretionary relief and a finding of extreme hardship through a motion to reopen deportation proceedings. The Ninth Circuit held in *Wang,* that, "[e]quities arising when the alien knows he is in this country illegally, e.g. after a deportation order is issued, are entitled to less weight than equities arising when the alien is legally in this country."

In *Ghassan v. INS,* 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals (Fifth Circuit) reviewed a section 212(c), waiver of deportation, discretionary relief case that involved the balancing of favorable and unfavorable factors. The Fifth Circuit found no abuse of discretion in the Board's weighing of

equitable factors against unfavorable factors in the alien's case, and the Fifth Circuit affirmed the principle that as an equity factor, it is not an abuse of discretion to accord diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien spouse's possible deportation.

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.

Therefore, the favorable factors in this matter are the applicant's family ties to a U.S. citizen spouse and stepchildren, which are after acquired equities. Other favorable factors in the applicant's case include the absence of any criminal record and the passage of 5 years since his removal from the United States.

The unfavorable factors in this matter include the applicant's attempted illegal entry into the United States on or about March 4, 1997; the applicant's failure to appear at his removal hearing in April 1997; and the applicant's unauthorized stay in the United States from March 1997 to June 2001.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable factors in his case.

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.