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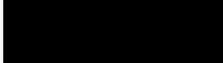
U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

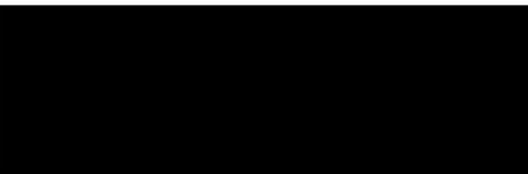
Date: OCT 19 2007

IN RE:



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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 August 16, 1992, applied for admission to the United States at the JFK International Airport in New York. The applicant presented a counterfeit I-551 Lawful Permanent Resident Card. The applicant was found inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain entry into the United States by fraud and for being an immigrant without valid entry documents. The applicant was placed into proceedings on the same day. On November 12, 1992, the immigration judge administratively closed the applicant's removal proceedings after he failed to appear for his immigration hearing. On November 15, 1995, the applicant filed an Application for Asylum or Withholding of Removal (Form I-589). On December 21, 1995, the applicant's Form I-589 was referred to an immigration judge and the applicant was placed into proceedings. On September 20, 1996, the immigration judge ordered the applicant removed *in absentia*. On March 13, 2001, the applicant married his spouse, [REDACTED]. On April 18, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed by Ms. [REDACTED]. On April 23, 2001, the applicant filed an Application for Waiver of Ground of Inadmissibility (Form I-601) which was approved on June 20, 2002. On the same day, the applicant was admitted as a conditional permanent resident to the United States.

On April 15, 2003, a Notice of Intent to Rescind the applicant's conditional permanent resident status was issued. On May 30, 2003, the applicant's conditional permanent resident status was rescinded because the applicant had stated on the Form I-485 and during his interview that he had never been in immigration proceedings or been ordered removed from the United States. On July 23, 2003, the applicant was removed from the United States and returned to Pakistan, where he has since resided. On September 23, 2003, [REDACTED] filed a second Form I-130 on behalf of the applicant, which was approved on November 3, 2005. On July 7, 2004, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien seeking admission within ten years of being removed from the United States. 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 reside in the United States with his U.S. citizen spouse.

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated June 12, 2006.

On appeal, counsel contends that the director failed to give adequate weight and consideration to the evidence that was submitted. Counsel contends that the director failed to recognize or give any meaningful discussion of the hardship suffered by the applicant's spouse. *See Counsel's Brief*, submitted August 10, 2006. In support of his contentions, counsel submits the referenced brief and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years 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.
- (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 on a 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 of Homeland Security] has consented to the alien's reapplying for admission.

The applicant was removed from the United States on July 23, 2003. 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 Guyana who became a lawful permanent resident in 1992 and a naturalized U.S. citizen in 2001. The applicant and [REDACTED] do not have any children together. The applicant is in his 30's and [REDACTED] is in her 20's.

On appeal, counsel asserts that the director misapplied *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), by finding that residence in the United States is only a positive factor when it is pursuant to a legal admission or adjustment of status. Counsel asserts that this statement by the director seems to indicate that a marriage to a U.S. citizen and the hardship that a U.S. citizen may suffer does not carry any weight in light of the fact the marriage occurred prior to legal admission or adjustment of status. Counsel notes that *Matter of Lee* does not relate to an application for permission to reapply for admission. The AAO finds that cases may be cited if they shed appropriate light on an issue in question in an application, whether or not the cited case refers to an identical type of application. 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 these precedent legal decisions to establish the general principle that "after-acquired equities" are accorded less weight for purposes of assessing favorable equities in the exercise of discretion. Accordingly, the AAO finds that the director did not err in finding that equities gained after commencement of proceedings, such as presence and employment in the United States, marriage to a U.S. citizen or hardship endured by a U.S. citizen spouse, should be accorded diminished weight.

Counsel, on appeal, asserts that [REDACTED] has continued to suffer hardship due to the applicant's removal. Counsel asserts that the director failed to mention the psychological report diagnosing [REDACTED] with major depressive disorder, single episode, moderate severity. Counsel asserts that the director failed to mention the approved Form I-130 and that [REDACTED] has demonstrated that she would suffer hardship if the petition was not approved.

A letter written by [REDACTED] a licensed psychologist, and based on several sessions with [REDACTED] during March 2004, states that she sought his counsel in regard to distress related to the applicant's removal. [REDACTED] diagnoses [REDACTED] with major depressive disorder, single episode, moderate severity and states that it is generally considered to be a treatable condition. He states that [REDACTED] has not shown a decrease in symptoms and has been referred for psychiatric evaluation to assess if medication may be of use. He states that he believes [REDACTED] is suffering significantly and it is his clinical opinion that her symptoms are directly related to her separation from the applicant. In that [REDACTED] findings are based on his "first few sessions" with [REDACTED], the AAO does not find them to reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional. As a result, evaluation's conclusions must be considered speculative and of diminished value to a finding of hardship. The AAO notes that despite the range of documentation submitted on appeal, the applicant provided no evidence that his spouse continues to require treatment for depression or that she has received treatment at any point since Dr. [REDACTED]'s diagnosis.

In her affidavit, dated June 2004, [REDACTED] states that the applicant has been part of her life since she was 16 years old and is the most important person in her life. She states it has become difficult for her to go about her daily life since his removal and she is consumed with worry and anxiety. She states that her depression is affecting everything around her and that she went to see a psychologist to see if he could help her overcome her feelings of hopelessness. She states that medication is not what she needs, but that she simply needs to be reunited with her spouse. She states that she had to quit school and start working full time in order to support herself. She states that the emotional stress is too much for her to deal with and there is also a financial burden since she earns approximately \$28,000 per year. She states that with the cost of rent, student loans, household expenses, attorney's fees and therapy bills it has been difficult to make ends meet. She states that the applicant has concerns for her safety and wellbeing if she were to join him in Pakistan as it is a dangerous place for Americans and she would have difficulty with the culture. She states that she is not Muslim and only speaks English.

In her letter, dated March 2006, [REDACTED] states that the three years that she has been separated from the applicant have been the most difficult of her life. She states that she had a troubling childhood because she grew up with her mother and stepfather while craving love and attention from her biological father. She states her feelings of abandonment in her childhood and the fact that the applicant's family was in Pakistan, caused her and the applicant to form an unbreakable bond, becoming each-other's family. She states that she cannot

live in Pakistan because, when she visited in 2005, she had to rely on the applicant to do everything for her because she did not speak the language and she felt uncomfortable in her American clothes. She states that she wore American clothes because she does not feel comfortable in traditional Muslim wear and she drew dirty stares and what she interpreted as nasty comments from people on the street. She states that the applicant told her that the people were only wondering why she was not traditionally dressed. She states that if she moved to Pakistan she would be unhappy. She states that she is accustomed to living in a free society where she can be a productive and equal counterpart to a man. She states that in Pakistan a woman's life is defined by her roles as a wife and mother. She states that beside the psychological and emotional effects of their separation she has experienced tremendous financial difficulties. She states that the applicant was the main bread winner and she was unable to keep their apartment when he was removed from the United States. She states that she has moved in with her mother and stepfather and her commuting time has increased. She states that, as she has again started to attend college, she is on the trains and buses very late at night and is scared. She states that her bank account was frozen when she was unable to pay her creditors and is on a payment plan to pay her 2005 taxes. She states that, despite an income of \$33,517 in 2005, she is struggling to make ends meet because of tuition, textbooks, traveling expenses, credit card bills and living expenses. She states that her parents have assisted her but that she does not want to depend on them too much longer. She states that the applicant is a good, kind, generous, respectful and loyal person.

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

The AAO finds that the unfavorable factors in this case include the applicant's original attempt to enter the United States in 1992 using a fraudulent document; his failure to attend immigration hearings in 1992 and 1996; his failure to comply with a removal order; his misrepresentation that he had never been the subject of immigration proceedings when he applied for adjustment of status in 2002; and his extended unlawful presence and employment in the United States.

The applicant in the instant case has multiple immigration violations. While the AAO notes that applicant's marriage to [REDACTED] and the hardships that she indicates have resulted from her separation from the applicant, the marriage and the approval of the immigrant visa petition benefiting the applicant occurred after the applicant was placed into proceedings and ordered removed. Accordingly, these factors are "after-acquired equities" and the AAO will accord them 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.