

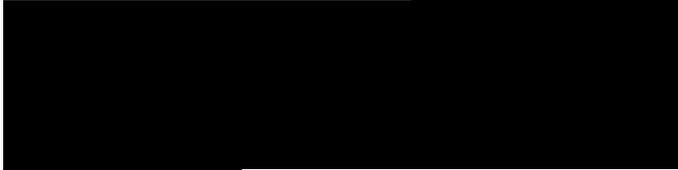


U.S. Citizenship
and Immigration
Services

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FILE:



Office: ATLANTA, GA

Date: DEC 17 2008

IN RE:



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:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Nigeria who attempted to enter the United States with a fraudulent passport and Form I-551, Permanent Resident Card, was placed in removal proceedings, was ordered removed on March 11, 2002, had his appeal denied by the Board of Immigration Appeals (BIA) on July 19, 2002, failed to appear for his scheduled removal from the United States and was removed on March 28, 2007. As such, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I). The applicant 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 reside in the United States.

The field office director determined that the applicant's unfavorable factors outweighed his favorable ones and denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Field Office Director's Decision*, at 4, dated January 16, 2008.

On appeal, the applicant asserts that not all of the hardship factors were considered in this case. *Form I-290B*, at 2, dated February 15, 2008.

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

(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.

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.

Where an applicant is seeking discretionary relief from removal or deportation and the courts are required to weigh favorable equities or factors against unfavorable factors, many have repeatedly upheld the general principle that less weight is given to equities acquired by an alien after an order of deportation or removal has been issued. The AAO notes that the applicant's Form I-212 involves a similar weighing of equities or favorable factors against unfavorable factors in order to determine whether to grant discretionary relief.

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 *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.

The favorable factors in this case include the applicant's U.S. citizen spouse, U.S. citizen daughter, emotional and financial hardship to the applicant's family, and lack of a criminal record. The applicant's family's financial hardship is evidenced by the loss of their home since the applicant departed the United States. In regard to the emotional hardship experienced by the applicant's spouse, her social worker states that she has sought counseling to help with her state of depression, she has been seeing the social worker since April 26, 2007, the changes brought on by the absence of her husband are overwhelming her and the applicant's departure has presented a tremendous amount of negative impact on the family. *Letter from [REDACTED] LCSW, MAC, SAP, CAMS*, dated June 28, 2007. The AAO notes that the applicant's spouse and child are "after-acquired equities" and are accorded diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's attempted fraudulent entry, which renders him inadmissible under section 212(a)(6)(C)(i) of the Act; his unauthorized employment; his unauthorized stay in the United States, and his resulting inadmissibility under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year prior to his departure; and his failure to comply with his order of removal. The AAO notes that the applicant may file a waiver of the two grounds of inadmissibility.

The applicant's actions in this matter cannot be condoned. However, the applicant has 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 that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.