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U.S. Citizenship
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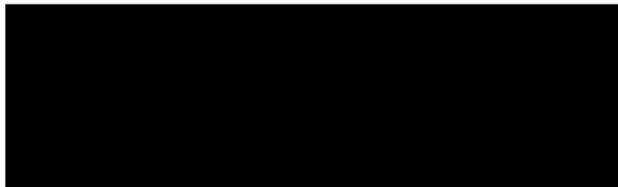


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 11 2008

IN RE: Applicant: [REDACTED]

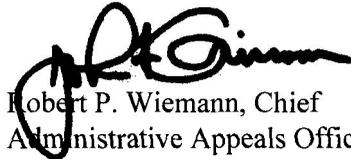
APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:



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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed. The application for permission to reapply for admission after removal is denied.

The applicant is a native and citizen of Romania who initially entered the United States on August 6, 1995, on a B-1 nonimmigrant visa, with authorization to remain in the United States until September 5, 1995. On September 26, 1995, the applicant's father filed an Application for Asylum and Withholding of Deportation (Form I-589). On January 25, 1996, an Order to Show Cause (OSC) was issued against the applicant. On April 24, 1998, an immigration judge granted the applicant voluntary departure, to depart the United States by May 25, 1998. The applicant filed an appeal with the Board of Immigration Appeals (Board), and on May 23, 2002, the Board affirmed the immigration judge's decision, and ordered the applicant to depart the United States within 30-days from the date of the decision. The applicant failed to depart the United States as ordered. On December 11, 2003, a Warrant of Removal/Deportation (Form I-205) was entered against the applicant. On January 10, 2004, the applicant departed the United States. On February 12, 2004, the applicant's wife filed a Petition for Alien Fiancé(e) (Form I-129F) and a Petition for Alien Relative (Form I-130) on behalf of the applicant. On June 11, 2004, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On December 11, 2004, the applicant's Form I-129F was approved. On September 19, 2006, the District Director, Cleveland, Ohio, denied the applicant's Form I-130. On October 24, 2006, the applicant, through counsel, filed a motion to reopen the District Director's denial of his Form I-130. On December 14, 2006, the District Director dismissed the applicant's motion to reopen. On January 12, 2007, and February 12, 2007, the applicant, through counsel, filed an appeal of the motion to reopen dismissal. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(II). 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 with his United States citizen wife.

The Director determined that the evidence submitted with the application does not warrant favorable discretion and denied the applicant's Form I-212 accordingly. *Director's Decision*, dated July 13, 2006. On August 11, 2006, the applicant, through counsel, filed an appeal of the Director's decision to the AAO, which the AAO dismissed on March 16, 2007. *Decision of the AAO*, dated March 16, 2007. On April 16, 2007, the applicant filed a motion to reopen the AAO's decision.

In the present motion to reopen and reconsider, the applicant, through counsel, reasserts that even though the applicant and his wife reside in separate countries, they "entered their marriage in good faith, and despite the duration of their separation and physical distance maintain their marital relationship." *Motion to Reopen and Reconsider: Dismissal of I-212 Appeal*, dated May 14, 2007. The AAO notes that the applicant married his wife on January 9, 2004, which was after he was placed into proceedings; therefore, it is an after acquired equity that is given less weight. Counsel asserts that "[w]hile the AAO considered [the applicant's] marriage to his U.S. citizen spouse as a favorable factor, it did not consider [the applicant's] other significant family

ties to his brother...a green card holder who currently resides in the United States.” *Id.* The AAO notes that other than the letter from [REDACTED] stating that the applicant’s brother works for InterContinental Hotels-Cleveland, counsel failed to provide any evidence that the applicant’s brother is a lawful permanent resident of the United States. *See letter from [REDACTED] Human Resources Coordinator, InterContinental Hotel & Conference Center, dated May 15, 2007.* Additionally, the AAO notes that the unfavorable factors in the applicant’s case, his failure to depart the United States as ordered and periods of unauthorized employment and presence, outweigh the favorable factors.

The issues raised by counsel in the motion to reopen and reconsider were previously raised in the initial appeal and those issues were addressed by the AAO. Counsel did not identify any legal errors in the prior AAO or Director’s decisions, and aside from counsel’s claim that the applicant has a lawful permanent resident brother, no new information or evidence was submitted in the motion to reopen and reconsider. Counsel has not established that the AAO decision of March 16, 2007 was in error.

8 C.F.R. § 103.5(a) states in pertinent part:

(a) Motions to reopen or reconsider

....

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

....

The issues raised in counsel’s motion to reopen and reconsider were thoroughly addressed in the previous AAO decision, and counsel failed to establish any legal error in the AAO decision or the Director’s decision.

Because counsel failed to identify any erroneous conclusion of law or statement of fact in her brief, the motion will be dismissed.

ORDER: The motion is dismissed and the previous decisions of the Director and the AAO are affirmed. The application for permission to reapply for admission after removal is denied.