

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

44

FILE:

[REDACTED]

Office: HOUSTON, TX

Date:

JAN 07 2008

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).

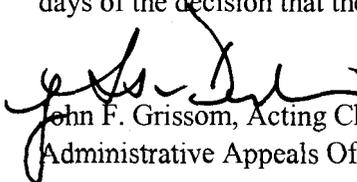
ON BEHALF OF APPLICANT:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the District Director, Houston, Texas, and 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 entered the United States without inspection on or about September 8, 1995, was ordered removed *in absentia* on April 15, 1996, self-deported from the United States thereafter and was admitted to the United States on April 14, 1999 with an immigrant visa obtained through misrepresentation. 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 with his family.

The district director determined that the applicant is subject to the reinstatement provision of section 241(a)(5) of the Act and is ineligible to apply for any relief under the Act. *District Director's Decision*, at 2, dated March 22, 2006. The district director denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Id.*

On appeal, counsel asserts that the applicant is not subject to reinstatement as he entered the United States legally. *Form I-290B*, received April 24, 2006.

The AAO notes that the record does not include evidence that the applicant's April 15, 1996 deportation order was reinstated. As such, section 241(a)(5) of the Act does not apply to the applicant.¹ However, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(ii)(I) of the Act.

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.

¹ Therefore, counsel's contentions on the inapplicability of section 241(a)(5) of the Act will not be addressed.

(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.

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 AAO notes that the applicant's Form I-212 requires a similar weighing of equities or favorable factors against unfavorable factors in order to determine whether to grant discretionary relief.

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 principal that less weight is given to equities acquired by an alien after being placed in deportation or removal proceedings.

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 favorable factors in this case include the applicant's lack of a criminal record, U.S. citizen spouse, hardship to the applicant's spouse, five U.S. citizen children, hardship to the applicant's middle child who is autistic and learning-disabled, and statements related to the applicant's good moral character. The AAO notes that the applicant's two youngest children are "after-acquired equities" and are accorded diminished weight. In addition, the applicant's spouse and his three oldest children were issued lawful permanent resident cards as derivatives of the applicant's lawful permanent resident case, which he obtained by misrepresenting a material fact. The applicant falsely answered "no" to the question of whether he failed to attend a deportation hearing within the last five years. *Applicant's Form 230, Part II*, at 1, dated March 19, 1999. Therefore, less weight is given to the applicant's spouse and his three oldest children based on how they obtained their legal status.

The unfavorable factors in this case include the applicant's entry without inspection, failure to appear for his deportation hearing, period of unauthorized stay, period of unauthorized employment, and misrepresentation in obtaining his lawful permanent resident card.

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 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 not established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.