

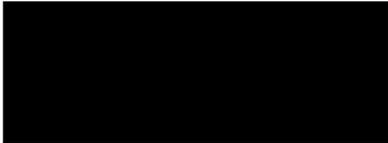
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HOUSTON, TX

Date: JAN 24 2011

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Houston, Texas denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The applicant filed a motion to reopen the AAO's decision and the AAO affirmed its previous determinations. The matter is now before the AAO on a second motion to reopen. The motion to reopen is granted. The order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Iran who initially entered the United States on an F-2 nonimmigrant visa on July 2, 1985. On July 29, 1988, the applicant's father filed a Request for Asylum in the United States (Form I-589), including his wife and two children. On May 17, 1989, an Order to Show Cause (OSC) was issued against the applicant. On May 4, 1990, an immigration judge denied the Form I-589, but granted the applicant's family voluntary departure. On May 9, 1990, the applicant's father filed an appeal with the Board of Immigration Appeals (BIA). On April 22, 1994, the applicant was granted deferred adjudication for credit card abuse and was sentenced to five (5) years probation. On August 15, 1995, the applicant was convicted of theft, a third degree felony, and was sentenced to 30 days in jail. On the same day, a motion to terminate deferred adjudication was filed in the applicant's credit card abuse case because of his theft conviction. The BIA remanded the applicant's immigration case back to the immigration judge and the applicant applied for Suspension of Deportation (Form I-256A) on October 6, 1995. Based on the applicant's criminal convictions, on November 13, 1995, an immigration judge denied the applicant's Suspension of Deportation. On July 16, 1996, an immigration judge ordered the applicant deported from the United States. On August 23, 1996, the applicant was convicted of organized crime and was sentenced to two (2) years in jail. Based on the applicant's violation of deferred adjudication for his credit card abuse conviction, on August 23, 1996, the applicant was sentenced to two (2) years in jail. On November 20, 1996, a Warrant of Deportation (Form I-205) was issued against the applicant, and on August 20, 1997, the applicant was removed from the United States to Iran.

On August 19, 1998, the applicant filed an Application for Permission to Reapply for Admission Into The United States After Deportation or Removal (Form I-212), which was denied on September 16, 1998. On August 30, 1999, the applicant's mother filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on March 29, 2001. On July 9, 2001, the applicant filed a second Form I-212. On August 3, 2001, the applicant's mother became a United States citizen. On June 3, 2004, the applicant was paroled into the United States for humanitarian reasons, with authorization to remain in the United States until September 3, 2004. On August 31, 2004, the applicant's parole was extended until October 2, 2004. On September 2, 2004, the applicant filed an Application for Waiver of Ground of Excludability (Form I-601), a third Form I-212, and an Application to Register Permanent Resident or Adjust Status (Form I-485). On June 21, 2006, the District Director denied the applicant's Form I-485 and terminated the Form I-601. Based on the applicant's previous order of removal, the applicant is permanently inadmissible to the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been convicted of an aggravated felony. Additionally, the applicant is inadmissible under section 212(a)(2)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii), for being convicted of a crime involving moral turpitude. 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 reside with his United States citizen mother, father, and sisters.

The district director determined that the applicant is inadmissible pursuant to section 212(a)(2)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii), for being convicted of a crime involving moral turpitude, and section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having been convicted of two or more offenses for which the aggregate sentences to confinement were 5 years or more. Since the applicant's Form I-601 was denied, the district director denied the applicant's Form I-212 accordingly. *District Director's Decision*, dated June 21, 2006.

On January 30, 2008, the AAO dismissed the applicant's appeal because he did not warrant a favorable exercise of discretion. *Decision of AAO*, dated January 30, 2008.

In her first motion to reopen and reconsider, counsel contended that the AAO erred as to matters of fact, law and discretion when dismissing the appeal of the denial of the applicant's Form I-212. *See Counsel's Motion to Reopen and Reconsider*, dated February 28, 2008. In support of her contentions, counsel submitted the referenced motion to reopen and reconsider, copies of conviction records, a psychological evaluation, psychological documentation, medical documentation and country condition reports.

On June 25, 2009, the AAO granted the applicant's motion to reopen and affirmed the order dismissing the applicant's appeal because he did not warrant a favorable exercise of discretion. *Decision of AAO*, dated June 25, 2009.

In the second motion to reopen and reconsider, counsel contends that there is new information and additional evidence for the AAO to consider. *See Counsel's Motion to Reopen and Reconsider*, undated. In support of her contentions, counsel submits the referenced motion to reopen and reconsider, psychological documentation, medical documentation, a letter from the applicant, recommendation letters, financial documentation and country condition reports. The entire record was reviewed in rendering a decision in this case.

Counsel contends that new evidence reveals that the applicant's mother displays symptoms consistent with major depression and that, for the last 13 years, she has been in counseling with a licensed professional counselor and family therapist. Counsel contends that the applicant's mother has been referred to a psychiatrist to be assessed for possible medication intervention. Counsel contends that the entire family has again met with a licensed clinical social worker who assessed the family's current psychological and emotional state, which reflects a downward spiral of the entire family's psychological state. *See Counsel's Motion to Reopen*.

Previous psychological and medical documentation submitted in support of the application reflects that the applicant's mother denied any other medical history other than hypertension. While counsel contends that the applicant's mother has revealed that the cause of her depression is the uncertain state of the applicant's immigration case and that she was slow to reveal that she had been seeing a therapist for the last 13 years due to the stigma associated with seeking mental help, the fact that the applicant's mother had previously submitted evaluations from two separate therapists contradicts such claims. Furthermore, while the documentation submitted by counsel to support a finding that the applicant's mother has sought psychological assistance for the past 13 years indicates that the applicant's mother has been a patient of the therapist since 1996, the documentation reflects that she initially sought services because of difficulties she was experiencing with parenting issues. The documentation does not reflect that the applicant's mother has experienced or been treated for a

psychological diagnosis for the past thirteen years. The documentation reflects that the applicant's parents have amassed debts which further contribute to the psychological issues of the family. The documentation reflects that the applicant's mother demonstrated symptoms of anxiety and depression, was trying to get an appointment with a psychiatrist to be assessed for possible psychotropic medication intervention and was diagnosed with major depression; the applicant's father was diagnosed with major depression; the applicant's oldest sister was diagnosed with major depression; and the applicant's younger sister was diagnosed with major depression. While the second report from [REDACTED], a licensed clinical social worker, indicates that she believes that the family has no chance of healing if the applicant is returned to Iran, her findings are based on three interviews with the applicant's family members and does not reflect that the family members have sought appropriate therapy. As such, while the AAO does not question the expertise of [REDACTED], this office cannot find that her reports reflect the insight and detailed analyses commensurate with an established relationship with a mental health professional. As a result, the evaluations' conclusions must be considered speculative and of diminished value. Moreover, the AAO will not consider the therapist's opinion about conditions in Iran as the record does not establish her expertise in these areas. While the documentation reflects that the applicant is the most emotionally stable member of the family, there is no evidence in the record to establish that the applicant's family members would be unable to receive appropriate care or medication in the absence of the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel also contends that, at the time of the applicant's last motion to reopen, the applicant's father was an accomplished entrepreneur who owned his own landscaping business, but that the applicant's father has now accumulated significant debt and lost his business. Counsel contends that the family has lost the business due to being unable to focus their energy on it. Counsel contends that the applicant has taken over control of the household expenses and debt because his parents are no longer able to deal with it. Counsel contends that, now more than ever, the applicant's parents require the applicant's presence in the United States and his uncertain immigration future is destroying them. *See Counsel's Motion to Reopen*.

The documentation reflects that equipment from the applicant's father's business had been repossessed due to default of payment, and that the applicant's parents have been tardy in making one payment on their mortgage and have some past due amounts on credit cards and medical bills. The evidence in the record indicates that the applicant's family has accumulated the debt over time and there is insufficient evidence that their financial issues are a direct result of their concern over the applicant's immigration issues.

The country condition reports counsel submits with the motion to reopen, while issued since the AAO's prior decision, do not reflect any significant changes since the AAO's original decision in 2008.

Counsel contends that the AAO incorrectly lists the applicant's overstay of his visa, overstay of his parole and failure to comply with a removal order as immigration violations. Counsel contends that, if the applicant overstayed his nonimmigrant status it was as a child and he should not be charged with the violation. Counsel contends that the applicant did not overstay his parole because his parole

to receive cancer treatment was extended until October 2, 2004, and he filed for adjustment of status on September 2, 2004. Counsel contends that the applicant did not fail to comply with an order of removal and the applicant's family assisted in effectuating the applicant's departure from the United States. *See Counsel's Motion to Reopen.*

Counsel correctly notes that the applicant was a minor at the time he was placed into immigration proceedings. However, the terms of the applicant's parole entailed admission solely for medical treatment and not for the purposes of applying for adjustment of status, as the applicant had been previously informed that he was ineligible for an immigrant visa and waivers at the U.S. Consulate abroad. The record also reflects that the applicant is engaging in authorized employment in the United States. The record reflects that the applicant failed to comply with the order of removal because he remained in the United States for 400 days past the date on which the order was issued. The record reflects that the applicant failed to appear or respond to a request to appear for removal on December 4, 1996 and was subsequently detained prior to being removed from the United States.

In her second motion to reopen, counsel contends that the applicant's criminal convictions were non-violent offenses for which the applicant completed his sentences. Counsel contends that these crimes were committed at an age when the applicant did not possess the maturity to fully appreciate the consequences of his actions and make good choices. Counsel contends that the applicant has no additional criminal record and is now highly respected in the community and has shown that he has been rehabilitated. *See Counsel's Motion to Reopen.* The AAO finds that, even though the elements of the crimes of which the applicant was convicted were non-violent, the record clearly reflects that the applicant, in perpetrating a theft crime, utilized a deadly weapon, specifically a firearm, and the AAO may view the facts surrounding the applicant's crimes to be factors to be considered in rendering a decision. While the applicant's crimes occurred at a young age, he still requires a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h). The applicant's Form I-601 was terminated and the applicant has failed to timely file an appeal of the denial of the Form I-601. The AAO notes that no purpose would be served in adjudicating the applicant's Form I-212 unless the applicant concurrently files a Form I-601 with the Form I-212, which is then approved prior to adjudication of the Form I-212.

Accordingly, the AAO finds that counsel failed to state reasons for reconsideration that are supported by any pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law.

The applicant's evidence submitted on motion fails to establish that the director's and the AAO's decisions to deny the applications were made in error. As in all proceedings, the applicant bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted. The AAO's previous decisions, dated June 25, 2009 and January 30, 2008 are affirmed. The application is denied.