



**U.S. Citizenship
and Immigration
Services**

(b)(6)

Date: **JAN 08 2013**

Office: BANGKOK

FILE: [REDACTED]

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:

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.

Thank you,

R. Rosenberg
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal (Form I-212) was denied by the Field Office Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The record reflects that the applicant is a native and citizen of Bangladesh who procured entry to the United States in 1991 by presenting a fraudulent passport and subsequently remained beyond the period of authorized stay. The applicant was consequently removed from the United States. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). 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)(C)(iii) in order to reside in the United States with his U.S. citizen spouse and three children, born in 2000, 2004 and 2009.

The field office director noted that the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied and thus the applicant's Form I-212 would not be approved. The applicant's Form I-212 was denied accordingly. *Decision of the Field Office Director*, dated September 14, 2011.

In support of the appeal, counsel submits a brief. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 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 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:

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.

The applicant's U.S. citizen spouse explains that she and her husband married in 1999 and they had a good romantic relationship and long-term separation from him is causing her to feel depressed and anxious. She explains that she is lacking sleep, is worried excessively and she can no longer concentrate. In addition, the applicant's spouse details that prior to his departure, the applicant financially supported the household while she cared for the children but due to his absence, she is experiencing financial hardship. *Declaration of* [REDACTED] dated March 16, 2009. In support, documentation has been provided establishing the applicant's employment as a Chef with [REDACTED] from July 1991 until April 2009. In addition, evidence has been submitted establishing that since the applicant's spouse's return to the United States after being with her husband in Bangladesh she is receiving cash aid and Medi-Cal and Food Stamps from the State of California Health and Welfare Agency. Moreover, a psychological assessment has been provided indicating it is unlikely that the applicant's spouse could work to support the family of three children, get necessary psychotherapeutic treatment and manage the logistics and the daily care of three children and stating that she needs the support of her husband. *Updated Psychological Assessment and Recommendations from* [REDACTED] *Ph.D.*, dated October 4, 2011. Finally, documentation establishing that the applicant's child, [REDACTED] suffered from respiratory problems when he traveled to Bangladesh is evidenced by the numerous doctor visits made while he resided in Bangladesh.

With respect to relocating abroad to reside with the applicant due to his inadmissibility, the applicant's U.S. citizen spouse asserts that she does not want to relocate to Bangladesh as she and her children will suffer, thereby causing her emotional hardship. Counsel notes that the family did in fact move to Bangladesh to be with the applicant but as a result of the problems experienced by the children, both academically and medically, they had to return to the United States. Confirmation of the children's enrollment in a United States school in November 2011 has been provided. Further, as noted above, medical documentation from Bangladesh establishing the applicant's child's respiratory problems have been provided. Further, notes in the file indicate that due to the problematic economic conditions in Bangladesh, the applicant has been unable to find a job and is reliant on his brother-in-law in the United States to support him financially.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and three children would face if the applicant were to remain in Bangladesh, regardless of whether they accompanied the applicant or stayed in the United States, the approval of the Petition for Alien Relative (Form I-130) filed on behalf of the applicant in May 2000, the long and stable marriage between the applicant and his spouse, the applicant's community ties, his gainful employment while in the United States, a support letter from the applicant's employer in the United States, the payment of taxes, Certified Professional Food Manager designation issued to the applicant in December 2004 and the passage of more than 21 years since his entry to the United States by fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant's entry by fraud or willful misrepresentation, periods of unlawful presence and unlawful employment while in the United States, his placement in removal proceedings and the removal order.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she 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 and the application approved.

ORDER: The appeal is sustained. The application is approved.