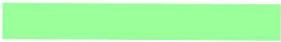


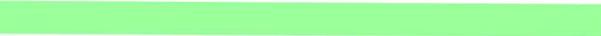


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 19 2014** Office: ATHENS, GREECE 

IN RE: Applicant: 

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:

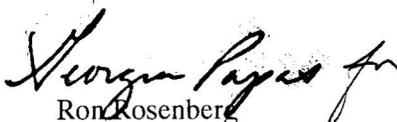
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), was denied by the Field Office Director, Athens, Greece, and was appealed to the Administrative Appeals Office (AAO), which dismissed the appeal. The matter is now before the AAO on motion. The motion will be granted, and the prior AAO decision to dismiss the appeal is affirmed.

The applicant is a native and citizen of Egypt who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant was removed from the United States on March 1, 2010; therefore he is also inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien who was previously removed. 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 in the United States with his U.S. citizen spouse.

The Field Office Director determined that because the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied, no purpose would be served by approving the applicant's Form I-212. The director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated March 22, 2013.

The AAO, reviewing the appeal of the denial of the applicant's Form I-601, dismissed the appeal, finding that although the AAO found that the applicant's spouse would experience extreme hardship if the waiver application were denied, a favorable exercise of discretion was not warranted in this particular case. On the same date, the AAO dismissed the appeal of the denial of the applicant's Form I-212, applying the same analysis concerning the applicant's discretionary factors. *Decision of the AAO*, dated December 17, 2013.

On motion, the applicant's spouse submits a statement requesting reconsideration of the AAO's decision. She asserts that the applicant already provided sufficient evidence to establish her extreme hardship and that the applicant is a good person. The applicant's spouse also submits additional letters of reference on behalf of the applicant from her two children and evidence that the applicant has no criminal record in New York or in Egypt. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. As the applicant's spouse has submitted new documentary evidence to support the applicant's claim, a motion to reopen will be granted.¹

¹ On page 1 of the Form I-290B, Notice of Appeal or Motion accompanying the motion, the applicant's spouse checked the box indicating she is filing a motion to reconsider. According to 8 C.F.R. § 103.5(a)(3), 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. The applicant's spouse does not assert that the decision was based upon an incorrect application of law or Service policy, nor does she present any pertinent precedent decisions. The notice, however, has been accepted as a motion to reopen.

The record includes but is not limited to: a statement by counsel in support of the appeal; statements from the applicant, the applicant's spouse, and the applicant's step-children; mental-health evaluations for the applicant's spouse, step-daughter and mother-in-law; medical documentation for the applicant's spouse; country-conditions information about Egypt; and letters of reference. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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.

The record indicates that the applicant entered the United States with a nonimmigrant tourist visa on October 13, 2000, and was authorized to stay in the United States until April 12, 2001. The applicant did not depart the United States when his period of authorized stay expired. The applicant was placed in immigration proceedings for remaining in the United States beyond his period of authorized stay. On June 13, 2006, an immigration judge ordered the applicant removed from the United States. On November 8, 2007, the Board of Immigration Appeals (BIA) dismissed the applicant's appeal. The applicant was removed from the United States on March 1, 2010. The

applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The record also reflects that on four occasions between October 2009 and January 2010, Immigration and Customs Enforcement (ICE) officials attempted to serve the applicant with Form I-229(a), Warning For Failure to Depart (Form I-229(a)), and after refusing to sign the form the first three times, the applicant signed it on January 11, 2010. On January 29, 2010, ICE officers escorted the applicant to John F. Kennedy International Airport to remove him to Egypt. The record indicates that the applicant initially refused to exit the van and subjected the ICE officers to verbal abuse. After the applicant voluntarily exited the van, in the departure area the applicant then refused to board the airplane. The record indicates that the applicant issued a threat, stating, "I will do something to this plane while in the air." The pilot refused to allow the applicant to board the plane, and the applicant was returned to ICE detention. The applicant subsequently was removed from the United States on March 1, 2010.

In a separate decision on a motion to reopen the applicant's Form I-601 application, the AAO has affirmed its decision to dismiss the appeal. Although the AAO found that the applicant's spouse would experience extreme hardship if the waiver application were denied, the AAO considered the new evidence submitted by the applicant's spouse with the motion and determined that a favorable exercise of discretion was not warranted in this particular case. The same analysis concerning the applicant's discretionary factors follows in this decision.

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.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work in the United States unlawfully. *Id.*

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 Seventh Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded great weight by the district director in a discretionary determination. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper. The AAO finds these 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 are as follows:

- The applicant's U.S. citizen wife lives in the United States, and the record indicates that the applicant's spouse will suffer hardship as a result of her separation from the applicant.
- The applicant is the beneficiary of a Form I-130, Petition for Alien Relative (Form I-130) filed by his spouse.
- The applicant has no criminal record in New York or in Egypt.
- The applicant's relatives and friends submit positive letters of reference on his behalf.

The unfavorable factors in this case are as follows:

- The applicant remained in the United States after his initial period of authorized stay expired on April 12, 2001 without extending his stay or applying for a change of status.
- Although the applicant was the beneficiary of a Form I-130 filed by his first U.S. citizen wife, the applicant and she failed to appear for a scheduled interview in pursuit of that application.
- The applicant did not depart the United States after being ordered removed by an immigration judge and after his appeal was denied by the BIA.

- The applicant refused to depart the United States on January 29, 2010, initially by refusing to leave the ICE van, and then by threatening to “do something” to the airplane if he were forced to board the plane.

Thus, while the AAO acknowledges the hardship that the applicant’s spouse will face as a result of a denial of the applicant’s Form I-212, it does not find the favorable factors in the present matter to outweigh the negative and will not favorably exercise the Secretary’s discretion.

In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has not met that burden.

ORDER: The motion is granted, and the prior AAO decision to dismiss the appeal is affirmed.