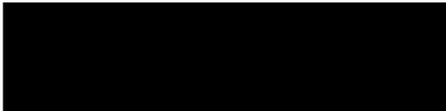


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE:

Office: Vermont Service Center

Date: AUG 15 2003

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

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applicant's second application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic who sought to procure admission into the United States on August 24, 1991, by presenting a fraudulent passport and Form I-551 stamp in another person's name. He was paroled into the United States for an exclusion hearing. On December 20, 1991, the applicant was ordered excluded and deported by an immigration judge under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and § 1182(a)(7)(A)(i)(I), for having attempted to procure admission by fraud and for being an immigrant without an immigrant visa or lieu document. The applicant was also found to be inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered excluded and deported. The applicant 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).

The applicant married [REDACTED] a U.S. citizen, on November 29, 1992, and that marriage was terminated by divorce on December 18, 1995. The approval of the Petition for Alien Relative filed by [REDACTED] was revoked on May 24, 1996.

The applicant filed a prior application for permission to reapply in May 1998. The director denied the application on March 26, 1999, and the AAO dismissed the appeal on July 14, 1999.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, the applicant discusses the decision on his Form I-360 application and noted that it was considered to be a negative factor. He states that he is a financially responsible parent and remains a law abiding individual.

Section 212(a)(9)(A) of the Act provides that:

(i) 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.

(iii) Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign

contiguous territory, the Secretary, Department of Homeland Security, has consented to the alien's reapplying for admission.

Section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and is now codified as section 212(a)(9)(A)(i) and (ii).

Although guidelines for considering permission to reapply for admission applications were promulgated in *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), and in *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), these holdings were rendered long before Congress amended the Act from 1981 through the present 1996 IIRIRA amendments and beyond. It is specifically noted that the Commissioner in *Matter of Lee*, referred to the intent of Congress in enacting former sections 212(a)(16) and (17) of the Act, 8 U.S.C. 1182(a)(16) and (17), in the conclusions and recommendations of the Senate Committee on the Judiciary in their report dated 1950. The Committee also reviewed section 3 of the 1917 Act in their study.

Even though the decisions in *Tin* and *Lee* have not been overruled, Congress and the courts following the 1981 amendments and onward have clearly shown in their intent, and in the legislation and in their decisions, that individuals who violate immigration law are viewed unfavorably. The later statutes and judicial decisions have effectively negated most precedent case law rendered prior to 1981. Such case law is still considered but less weight is given to favorable factors gained after the violation of immigration laws following statutory changes and judicial decisions.

Even the Regional Commissioner in *Tin* held that an alien's unlawful presence in the United States is evidence of disrespect for law. The Regional Commissioner noted also that the applicant gained an equity (job experience) while being unlawfully present subsequent to that return. The Regional Commissioner stated that the alien obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country. The Regional Commissioner then concluded that approval of an application for permission to reapply for admission would appear to be a condonation of the alien's acts and could encourage others to enter without being admitted to work in the United States unlawfully.

The court held in *Garcia-Lopez 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. *Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992), cert. denied, 507 U.S. 971 (1993). It is also noted that the Ninth Circuit Court of Appeals in *Carnalla-Muñoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that after-

acquired equities, referred to as "after-acquired family ties" in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded great weight by the district director in considering discretionary weight. The applicant in the present matter attempted to procure admission into the United States by fraud in August 1991, was ordered excluded and deported *in absentia* in December 1991, failed to depart, and married his spouse in November 1992, divorced her in 1995, and seeks to adjust his status based on spousal abuse. He now seeks relief based on that after-acquired equity.

The favorable factors in this matter are the absence of a criminal record and his family members in the United States.

The unfavorable factors in this matter include the applicant's attempt to enter by fraud, his failure to attend his exclusion hearing, his being ordered excluded and deported, and his failure to depart and remain abroad. To reward a person for remaining in the United States in violation of law, would seriously threaten the structure of all laws pertaining to immigration.

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.

In discretionary matters, the applicant bears the full burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. Section 291 of the Act, 8 U.S.C. § 1361. After a careful review of the record, it is concluded that the applicant has failed to establish he warrants the favorable exercise of the Secretary's discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.