

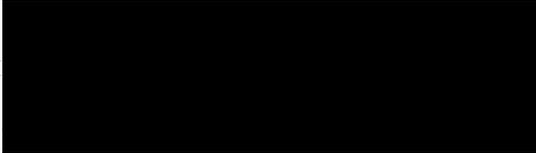
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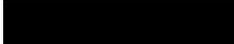
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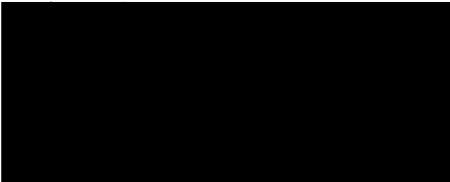
Office: SAN ANTONIO, TEXAS

Date:

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:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the District Director, San Antonio, 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 Mexico who on July 3, 1989, was convicted in the Circuit Court of the Twelfth Judicial Circuit Will County, Illinois for the offenses of residential burglary and armed robbery. On September 3, 1991, the applicant was served an Order to Show Cause for a hearing before an Immigration Judge and he was released on a \$500 bond. On September 8, 1992, an Immigration Judge ordered the applicant deported to Mexico. He filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on April 7, 1999. The applicant failed to surrender for removal or depart from the United States and a Warrant of Deportation was issued on May 25, 1999. On August 10, 1999, the applicant was removed from the United States at Laredo, Texas pursuant to section 241(a)(2)(A)(ii) (now section 237(a)(2)(A)(ii)) of the Immigration and Nationality Act (the Act). The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 travel to the United States and reside with his U.S. citizen spouse and children.

The District Director determined that the evidence on record fails to establish that a favorable exercise of the Attorney General's discretion is warranted and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. See *District Director's Decision* dated October 7, 2002.

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

(A) Certain aliens 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 who 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 alien 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without

being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, counsel states that the District Director's decision contains no specific reason for the denial, the denial of the application will mean the continued separation of the applicant and his family, the crimes committed are more than 13 years old, the BIA waited seven years to deny the applicant's appeal and that until the present law the applicant would be eligible for relief under former section 212(c) of the Act.

The record reflects that on July 3, 1989, in the Circuit Court of the Twelfth Judicial Circuit Will County, Illinois, the applicant was convicted for the offenses of residential burglary and armed robbery and was sentenced to five years imprisonment for each conviction, to run concurrently.

Section 101(a)(43) of the Act defines the term "aggravated felony":

(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment at least 1 year;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least 1 year.

In the instant case the applicant's convictions are aggravated felonies for immigration purposes.

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 of deportation; the recency of the deportation; the length of legal residence in the U.S.; the applicant's moral character and his respect for law and order; evidence of reformation and rehabilitation; the applicant's family responsibilities; and hardship to if the applicant were not allowed to return to the U.S.

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.*

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 be a

condonation of the alien's acts and could encourage others to enter without being admitted to work in the United States unlawfully. *Id.*

The court 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-Nunoz 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 considering discretionary weight. 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 applicant in the present matter married his U.S. citizen spouse on January 10, 1992, while in deportation proceedings. He now seeks relief based on that after-acquired equity.

The favorable factors in this case include the applicant's family ties to U.S. citizens, his spouse and children, and the approval of a petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States on or about November 28, 1977, his aggravated felony convictions, his failure to depart the United States after his appeal was dismissed by the BIA, his employment without authorization and his periods of unlawful presence in the United States.

The applicant's actions in this matter cannot be condoned. His equity, marriage to a U.S. citizen, gained after he was in deportation proceedings, can be given only minimal weight. 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 failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.