



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE:

[REDACTED]

Office: DENVER, COLORADO

Date:

OCT 21 2004

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

ON BEHALF OF APPLICANT:

[REDACTED]

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

**PUBLIC COPY**

identifying data deleted to  
prevent disclosure of unclassified  
information from the agency

**DISCUSSION:** The Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied by the District Director Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal dismissed.

The applicant is a native and a citizen of Mexico who attempted to procure admission into the United States on August 26, 1998. Consequently, on August 26, 1998, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act 8 U.S.C. § 1225(b)(1). The District Director states that the applicant reentered the United States on or about November 21, 1998, without authorization and was removed from the United States on November 27, 1998 at El Paso, Texas. The record reflects that the applicant reentered the United States on October 1, 2000, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). On December 18, 2001, his removal order was reinstated pursuant to section 241(a)(5) of the Act and the applicant was removed to Mexico on January 8, 2002. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant married a U.S. citizen on January 13, 2001 and he is the beneficiary of an approved petition for alien relative filed by his U.S. citizen spouse. 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

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See District Director's decision* dated March 8, 2003.

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 five 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 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 submits a brief and a letter from the applicant's spouse. In the brief counsel states that Citizenship and Immigration Services (CIS) violated the constitutional rights of the applicant because CIS failed to provide a copy of the applicant's file after she had submitted a request under the Freedom of Information Act (FOIA).

This office does not have jurisdiction over the request for copies of the applicant's file. The fact remains that the applicant was removed from the United States on three separate occasions and he is therefore inadmissible under section 212(a)(9)(A)(i) of the Act. The proceeding in the present case is for the application for permission to reapply for admission into the United States after deportation or removal under section 212(a)(9)(A)(iii) of the Act. Therefore the AAO will not discuss the FOIA request.

In her letter the applicant's spouse states that she did not know of the applicant's illegal entry into the United States at the time of their marriage. She further states that she is a very hard working person and a law abiding citizen and that without the applicant she would not be able to meet her financial obligations and therefore her credit rating would suffer. On appeal counsel states that the applicant's spouse would suffer hardship if the applicant were not permitted to enter the United States. In addition counsel states that the applicant's spouse would have to sell her home, which she owns jointly with the applicant, because she would not be able to afford the cost. Furthermore counsel states that the applicant's spouse cannot move to Mexico with the applicant because she must take care of her aging father. Finally counsel states that the applicant has no negative factors outside of his immigration law violations and that the social and humane considerations outweigh the negative factors in this case.

Unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied.

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.*

The court held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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 was removed from the United States on August 26, 1998, reentered illegally and married his U.S. citizen spouse on January 13, 2001. He now seeks relief based on that after-acquired equity.

The AAO finds that the favorable factors in this case include the applicant's family tie in the United States, his spouse and the approval of a petition for alien relative.

The unfavorable factors in this matter include the applicant's attempt to enter the United States on August 26, 1998, his illegal re-entry subsequent to his removal, his reentry after removal on November 27, 1998, his employment without authorization and his lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee*, *supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. 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. His equity, marriage to a U.S. citizen gained after his removal from the United States and his subsequent illegal reentry 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 the applicant 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.