

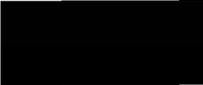


U.S. Citizenship
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FILE:  Office: CALIFORNIA SERVICE CENTER Date: **DEC 19**

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California 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 Nicaragua who entered the United States without a lawful admission or parole on or about August 17, 1982. On February 4, 1988, the applicant filed a Request for Asylum in the United States (Form I-589) with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). On December 6, 1988, his Form I-589 was denied and an Order to Show Cause (OSC) for a hearing before an immigration judge was issued on April 7, 1989. On November 1, 1989, an immigration judge found the applicant deportable pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act) for having entered the United States without inspection and granted him voluntary departure until February 1, 1990, in lieu of deportation. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on September 16, 1994, and he was permitted to depart from the United States voluntarily within 30 days from the date of the BIA's order. On April 8, 1996, a petition for review of the BIA's order, filed with the United States Court of Appeals for the Ninth Circuit, was denied. The Ninth Circuit Court of Appeals issued a mandate on May 31, 1996. The applicant's period of voluntary departure granted by the BIA ran anew from the date of the Ninth Circuit Court of Appeals mandate, i.e. 30 days from May 31, 1996. The applicant failed to surrender for removal or depart from the United States on or before June 30, 1996. The applicant's failure to depart the United States on or before June 30, 1996, changed the voluntary departure order to an order of deportation. On June 30, 1996, a Warrant of Removal/Deportation (Form I-205) was issued, and on July 8, 1996, a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that he appear at the San Francisco District Office in order to be removed from the United States. The applicant failed to surrender for removal or depart from the United States. On August 12, 1996, the applicant filed a Motion to Reopen (MTR) his deportation proceedings with the BIA, which was denied on March 25, 1997. Consequently, on May 14, 1997, the applicant was deported from the United States.

The record reflects that the applicant reentered the United States in July 1997 without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). The applicant was placed in removal proceedings. On November 5, 1998, the applicant failed to appear for the removal hearing and he was subsequently ordered deported *in absentia* by an immigration judge. The record of proceedings reflects that the applicant departed the United States on an unknown date and as such self deported.

On January 26, 1999, at the San Ysidro, California, Port of Entry, the applicant attempted to procure admission into the United States by presenting a counterfeit Authorization for Parole of an Alien into the United States (Form I-512). At that time he presented himself as a citizen of Mexico and used an assumed name. He was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i), for having attempted to procure admission into the United States by fraud, and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I), for being an immigrant not in possession of a valid immigrant visa or other valid entry document. Consequently, on January 27, 1999, 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 record reveals that the applicant reentered the United States on an unknown date, but shortly after his removal, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act. On March 31, 2000, the applicant applied for relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA). 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 remain in the United States and reside with his LPR spouse and child and his U.S. citizen children.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. *See Director's Decision* dated January 27, 2006.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is signed by the applicant's spouse and not the applicant himself. Therefore, the AAO will not be sending a copy of the decision to the attorney mentioned on the Form G-28, but this office will accept the submitted information.

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 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 Illegal Immigration Reform and Immigrant Responsibility Act (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 in 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 deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, counsel states that no consideration was given to the applicant's family members who reside in the United States and who will suffer extreme hardship if the applicant's Form I-212 is denied. Counsel submits copies of the applicant's spouse's and child's LPR status, copies of U.S. birth certificates for two of the

applicant's children, a copy of a Petition for Alien Relative (Form I-130) filed by the applicant's spouse and copies of the applicant's siblings immigration status. In addition, counsel states that the applicant has been in the United States since August 1983, has been in legal status February 1988 and submits a copy of the applicant's employment authorization card that was issued on June 16, 2005. Finally, counsel alleges that the applicant "has not been in violation of immigration laws, pending the final outcome of his case by the appropriate decision makers." In a letter submitted by the applicant, he states that he has no use of his right arm due to an accident and that he needs his family's support. In addition, the applicant states that it has been a great hardship being separated from his family and that he has no family in Nicaragua. Finally, the applicant asks for forgiveness and states that the only reason he reentered the United States was to be reunited with his family.

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 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 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 LPR spouse on March 21, 1994, approximately five years after he was placed in deportation proceedings. The applicant's spouse should reasonably have been aware, at the time of their marriage, of the applicant's immigration violations and the possibility of his being removed. He now seeks relief based on that after-acquired equity. Therefore, hardship to his spouse will not be accorded great weight.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his LPR spouse and child, and his U.S. citizen children, and the prospect of general hardship to his family.

The AAO finds that the unfavorable factors in this case include the applicant's initial illegal entry into the United States, his failure to depart the United States after he was granted voluntary departure and after his voluntary departure order became a final order of deportation, his illegal reentry subsequent to his deportation, the applicant's attempt to enter the United States by fraud and his illegal reentry after his removal, his periods of employment without authorization and his extended periods 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 an LPR, gained after he was placed 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 eligibility 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.