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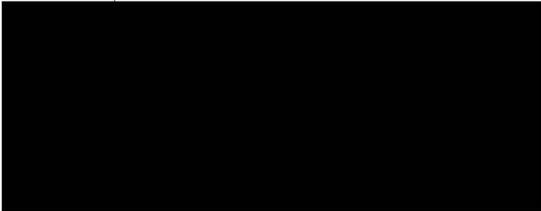


FILE: [REDACTED] Office: PHOENIX Date: OCT 06 2006

IN RE: [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:



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 Acting District Director, Phoenix, Arizona, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it 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 April 29, 1973, entered the United States without inspection. On February 25, 1982, the applicant was placed into proceedings. On October 18, 1984, the applicant failed to appear for his immigration hearing but the immigration judge granted him voluntary departure until November 17, 1984. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On November 16, 1984, the applicant's first U.S. citizen daughter was born. On November 29, 1984, a warrant for the applicant's removal was issued. On December 11, 1984, the applicant was removed from the United States and returned to Mexico. On May 4, 1985, the applicant reentered the United States without inspection, parole or permission to reapply for admission. On June 20, 1985, the applicant was again placed into proceedings. On June 27, 1985, the immigration judge ordered the applicant removed from the United States. On July 19, 1985, the applicant appealed to the Board of Immigration Appeals (BIA). On January 4, 1986, the applicant's first U.S. citizen son was born. On June 6, 1986, the BIA dismissed the applicant's appeal. On August 15, 1986, a warrant for the applicant's removal was issued. On September 5, 1986, the applicant was removed from the United States and returned to Mexico. On an unknown date, but prior to September 6, 1987, the date on which immigration officers encountered the applicant, the applicant reentered the United States without inspection, parole or permission to reapply for admission. On September 6, 1987, the applicant attempted to gain admission to the United States at the Naco, Arizona, Port of Entry, by presenting a U.S. voters registration card. The applicant was found to have made a false claim to U.S. citizenship and was permitted to return to Mexico voluntarily. On an unknown date in 1987, the applicant reentered the United States without inspection, parole or permission to reapply for admission. The applicant resumed residence and unauthorized employment in the United States. On August 1, 1988, the applicant's second U.S. citizen daughter was born. On July 14, 1990, the applicant's second U.S. citizen son was born. On November 10, 1997, the applicant married his U.S. citizen spouse. On November 18, 1997, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On April 15, 1998, the Form I-130 was approved. On March 26, 1998, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on the approved Form I-130. On April 29, 2004, the applicant filed the Form I-212 and an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant was found inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) for seeking admission after being removed from the United States. 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) in order to remain in the United States and reside with his U.S. citizen spouse and children.

The acting district director determined that the applicant was inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(A) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(A), for attempting to gain admission to the United States by fraud and seeking admission after having been removed from the United States. The acting district director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The acting district director denied the Form I-212 accordingly and found that no purpose would be found in granting the Form I-601. See *Acting District Director's Decision* dated May September 26, 2005.

On appeal, counsel contends that the favorable factors outweigh the unfavorable factors in the applicant's case. See *Applicant's Brief*, dated November 17, 2005. In support of the appeal, counsel submits only the above-referenced brief. The entire record was reviewed in rendering a decision in this case.

The AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A) of the Act and, therefore, must receive permission to reapply for admission.

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.

The record of proceedings indicates that the applicant entered the United States without inspection, was ordered removed, subsequently entered the United States without lawful admission or parole and without permission to reapply for admission after his removal, was ordered removed, subsequently attempted to enter the United States by making a false claim to U.S. citizenship, was permitted to return voluntarily, and subsequently entered the United States without lawful admission or parole and without permission to reapply for admission after his removal. The acting district director based the finding of inadmissibility under section 212(a)(9)(A) of the Act on the applicant's admitted reentries into the United States after prior removals. Counsel does not contest the acting district director's determination of inadmissibility.

On appeal, counsel asserts that the applicant merits a favorable exercise of discretion because he has a U.S. citizen spouse and four U.S. citizen children, he is eligible under his wife's approved Form I-130 for an immigrant visa, he has been steadily employed, his wife and children would suffer hardship without his support, his wife's medical condition of multiple sclerosis would be exacerbated by the refusal of his application for permission to reapply for admission, his wife's income is insufficient to support the family, he is a person of good moral character and that, except for his immigration violations, he has never violated any law.

The AAO finds that counsel has failed to provide sufficient evidence to prove that the applicant's spouse would be unable to support herself and her family or that her medical condition would be exacerbated by the refusal of the applicant's permission to reapply for admission. The medical documentation in the record does not indicate that the applicant's spouse's multiple sclerosis would be exacerbated by the applicant's absence; it indicates that she has had one incident in 2000 in which she experienced extreme symptoms of multiple sclerosis and that, since her original 2000 diagnosis, she has had no further incidents due to the medication she takes. Counsel's brief and documentation in the record indicate that the applicant's spouse earns a salary and receives monthly disability payments in the amount of approximately \$19,960 per year. Counsel asserts that the applicant's spouse's income is insufficient to support her and her family. However, the applicant's eldest son is over the age of 21 and the record shows that, even without assistance from the applicant, the applicant's spouse receives sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>.

Counsel states that the applicant has been married to his current spouse since 1994. *See Applicant's Brief*, dated November 17, 2005. However, evidence in the record indicates that the applicant's original marriage to his current spouse was not valid because he was married to another woman at the time he married his current spouse. The record reflects that the applicant has since divorced his first wife and legally married his current spouse in 1997.

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 7th 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-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 AAO finds that the above-cited precedent 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 matter are the applicant's U.S. citizen spouse and children, the absence of any criminal record, and an approved immigrant petition for alien relative. The AAO finds that the applicant's marriage, approved immigrant petition and birth of his children occurred after the applicant was placed into proceedings. The AAO finds that these factors are "after-acquired equities" and that any favorable weight derived from the applicant's marriage, immigrant petition and children is accorded diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States, extended unauthorized residence and employment in the United States, the applicants attempt to gain admission to the United States by fraud which resulted in inadmissibility under section 212(a)(6)(C)(i) of the Act and the applicant's multiple returns to the United States without lawful admission or parole and without permission to reapply for admission after he was informed such permission was required.

The applicant in the instant case has multiple immigration violations, including fraud. The applicant's actions in this matter cannot be condoned. The totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the laws of the United States, and that the favorable factors in the present matter are outweighed by the unfavorable factors.

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.