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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date:

AUG 27 2007

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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The 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 Guatemala who, on July 26, 1988, was apprehended by immigration officers on the same day he had entered the United States without inspection. On July 27, 1988, the applicant was placed into proceedings. On August 26, 1988, the immigration judge ordered the applicant removed. On August 31, 1988, the applicant was removed from the United States and returned to Guatemala. On March 2, 2000, the applicant married his spouse, [REDACTED] a naturalized U.S. citizen. On April 30, 2001, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on February 28, 2002. On December 16, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On May 2, 2005, the applicant appeared at Citizenship and Immigration Services' (CIS) Phoenix, Arizona District Office. The applicant testified that he had originally entered the United States without inspection on August 15, 1988 and he had never been removed from the United States. When confronted with his previous removal, the applicant admitted that he had concealed his prior removal so that his immigration process would not be complicated. On February 6, 2006, the applicant filed the Form I-212. 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 within ten years of departing the United States after being ordered removed. 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.

The district director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The district director denied the Form I-212 accordingly. *See District Director's Decision* dated April 17, 2006.

On appeal, counsel contends that the applicant has strong ties to the United States and his spouse would suffer extreme hardship if he were removed from the United States. *See Counsel's Brief*, dated July 14, 2006. In support of the appeal, counsel submits the referenced brief, affidavits from friends and family, financial and employment-related documentation, country conditions reports and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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 . . .

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 removed from the United States and reentered the United States after removal without inspection. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and, therefore, must receive permission to reapply for admission.

The record reflects that [REDACTED] is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1996. The applicant and [REDACTED] do not have any children together. The record reflects that applicant's father and stepmother reside in the United States and counsel asserts that they are both U.S. citizens. However, there is no evidence in the record to confirm that either parent has any legal status in the United States. The applicant and [REDACTED] are in their 30's.

On appeal, counsel contends that the applicant returned to the United States the same year he was removed because he was fleeing extreme violence in Guatemala and his life was threatened due to his family's ties to the guerilla forces. Counsel asserts that, upon arrival in the United States, the applicant began working with his Church's ministries. Counsel asserts that the applicant has overwhelming favorable equities, in that, his family members will suffer extreme hardship if he is removed, he is a productive member of the community who works with troubled and at-risk youths, and gives both his time and money to charitable organizations. Counsel asserts that the applicant and [REDACTED] have financed a home for which the applicant's income provides the maintenance. Counsel asserts that the applicant has grown close to his family in the United States and has touched many lives, as evidenced by the letters of support from family, friends and co-workers. Counsel asserts that although the applicant has some family in Guatemala he has no financial, investment, property or business interests there. Counsel asserts that the applicant has a stable family life and a rewarding job in the United States. Counsel asserts that the applicant owns his own home and pays taxes. Counsel asserts that [REDACTED] would be unable to visit the applicant in Guatemala on a regular basis due to the adverse change in her income without the applicant's current earnings in the United States.

Counsel asserts that the cultural and social environment in Guatemala, especially for women, is very different from the United States. Counsel asserts that the applicant and [REDACTED] do not want to raise a family there because violence against women, including rape and heinous crimes are on the rise, which is compounded by the Guatemalan government's lack of resources to investigate and prosecute perpetrators. Counsel asserts that [REDACTED] has resided in the United States most of her life and is a professional with a successful career whose many hopes and life ambitions will be all but impossible to achieve if she accompanies the applicant to Guatemala. Counsel asserts that [REDACTED] would have to become accustomed to living in constant fear for her personal safety and dignity and, despite country condition reports indicating that there have been no recent attacks based on vendettas from the civil war, the danger to her would be heightened by the applicant's

family's connections to the guerillas. Counsel asserts that [REDACTED] has never been to Guatemala and adjustment to that society would pose a hardship.

On May 2, 2005, the applicant testified that he had used "speed" on ten to fifteen occasions during 1995. The applicant also testified that he was unaware that it was illegal to take speed, an amphetamine. Counsel asserts that the applicant underwent a rehabilitation program in 1996, followed by an internship with his Church for three years. Counsel asserts that the applicant has demonstrated that he has turned his life around.

The applicant, in his affidavits, states that he grew up in a violent home, in which his father was a guerilla and fought for civil rights in Guatemala. He states that he was tortured by the Guatemalan government and is afraid the same fate awaits him upon return to Guatemala, despite country condition reports indicating that there have been no recent attacks based on vendettas from the civil war. He asserts that he now works as a Prevention Specialist teaching young children about their choices and using his life as an example. He states that he wants to continue his work in the United States alongside his beloved spouse. He states that [REDACTED] has helped him tremendously and he would never take her to Guatemala and endanger her life.

[REDACTED], in her affidavit, states that the applicant and she are very much a part of each other's lives and they could not function without each other. She states that applicant is a value to society as he works very diligently with at-risk youths. She states that the applicant puts himself on the line every day when he works with these youths who are in gangs or are in crisis. She states that when she met the applicant her home life was a disaster, she had very little money, had dropped out of school and had no plans for the future. She states that the applicant encouraged her to go back to school and do well. She states that she does not want to be separated from the applicant, but that she could not go with him to Guatemala because of the violence against civilians, the corruption in the government and the poverty, which would prevent her from living a normal and happy life with the applicant. She states that the applicant's life would be in jeopardy if he returned to Guatemala because his father was part of the guerilla forces and he is at risk of being murdered like many of his extended family, despite country condition reports indicating that there have been no recent attacks based on vendettas from the civil war. She states that, as a child she suffered from great depression and she feels herself falling back into that deep depression. She states that the United States is the only country she knows and loves, and that the opportunities here are endless. She states that she and the applicant are contributing members of society who pay their taxes. She states that, without the additional income from the applicant, she would be unable to afford the mortgage payments on their property. She states that to deny the applicant's permission to reapply for admission would mean separation and divorce from the applicant because she would be unable to go to Guatemala for her own safety.

Letters from friends, co-workers and family state that the applicant has dedicated his life to working with youths and their families in gang prevention programs and that he is a man of integrity. They state that he is a person of good character who has contributed greatly to the community

Counsel asserts that there is strong evidence of the applicant's good moral character, which is exemplified by his charitable works and that the length of time since his immigration violation weighs heavily in his favor. Counsel asserts that the applicant has been an excellent role model for youth in his community through his work at his father's ministry and his work as a Prevention Specialist for a non-profit behavioral health and substance abuse agency. Counsel asserts that the applicant has avoided contact with the justice system, other

than for traffic matters and has never been charged with or convicted of any criminal offense. However, the record does not support counsel's claims. Instead, it reflects that the applicant attempted to obtain immigration benefits during his adjustment of status interview in 2005 by concealing his prior immigration history. While the applicant does not have a criminal record in the United States, he provided false information in order to obtain immigration benefits. This representation may render the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who attempted to obtain immigration benefits by fraud.

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, an approved immigrant petition for alien relative, his payment of taxes and his activities with at-risk youths in the community.

The AAO finds that the unfavorable factors in this case include the applicant’s illegal entry into the United States, his illegal reentry into the United States after removal, extended periods of unauthorized residence and employment in the United States, his admitted use of a controlled substance, and misrepresentation in an attempt to obtain immigration benefits.

The applicant in the instant case has multiple immigration violations. Moreover, the AAO finds that the applicant’s marriage, the approval of the immigrant visa petition benefiting him and his work with at-risk youths occurred after the applicant was placed into immigration proceedings and was removed from the United States in 1988. The AAO finds that these factors are “after-acquired equities” and therefore accords them diminished weight. 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.