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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 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:



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 Director, California Service Center 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 South Korea who, on June 29, 1995, applied for admission to the United States at the Blaine, Washington Port of Entry. The applicant presented an I-551 Resident Alien Card bearing the name "[REDACTED]." The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud. The applicant was placed into proceedings. On July 11, 1995, the immigration judge ordered the applicant removed. On July 18, 1995, the applicant was removed from the United States. On March 8, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based an approved Petition for Alien Relative (Form I-130) filed on his behalf by his naturalized U.S. citizen sister, S [REDACTED]. On March 5, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. The applicant testified that he reentered the United States without a lawful admission or parole and without permission to reapply for admission on September 10, 1996. On September 30, 2005, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (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 adjust his status to that of lawful permanent resident.

The director determined that the applicant was inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(C) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(C), for attempting to enter the United States by fraud and for entering the United States without being admitted after having been removed. The director determined that the applicant was statutorily ineligible for a waiver pursuant to section 212(a)(9)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(iii) because it had been less than ten years since the applicant's last departure from the United States. The director denied the Form I-212 accordingly. *See Director's Decision* dated April 20, 2006.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i) of the Act. Counsel contends that the applicant is eligible for permission to reapply for admission to the United States pursuant to section 212(a)(9)(A)(iii) of the Act and that the favorable factors in the applicant's case outweigh the negative factors. *See Form I-290B and Attachment*, dated May 19, 2006. In support of his contentions, counsel submits only the referenced Form I-290B and attachment. The entire record was reviewed in rendering a decision in this case.

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

(A) Certain aliens 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 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 on a 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 Secretary has consented to the alien's reapplying for admission.

Counsel asserts that the director erred in finding the applicant to be inadmissible pursuant to section 212(a)(9)(C) of the Act. In order to be found inadmissible pursuant to section 212(a)(9)(C) of the Act, an applicant, while he may have been ordered removed prior to April 1, 1997, must have unlawfully reentered or attempted unlawful reentry after April 1, 1997, the date of enactment of the provision. *See Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs* dated June 17, 1997. The AAO finds that the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act because his unlawful entry into the United States occurred prior to April 1, 1997. However, 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 the applicant has three children who are all natives and citizens of South Korea. Ms. [REDACTED] is a native of South Korea who became a lawful permanent resident in 1982 and a naturalized U.S. citizen in 1988. The applicant is in his 40's.

The AAO now turns to a consideration of positive and adverse factors in the present case.

On appeal, counsel asserts that the applicant is married to [REDACTED], a U.S. citizen. Counsel asserts that the applicant's father is also a U.S. citizen. However, the record does not establish that the applicant has a U.S. citizen or lawful permanent resident spouse or parent. The record reflects that, on November 27, 1985, the applicant married [REDACTED] a native and citizen of Korea. On the Form I-485, and during his interview, the applicant indicated that he was still married to Ms. [REDACTED]. On the Form I-212, the applicant indicated that he had a U.S. citizen spouse, Ms. [REDACTED]. There is no evidence to establish that the applicant is legally married to Ms. [REDACTED] or that Ms. [REDACTED] is a U.S. citizen. Additionally, there is no evidence in the record to establish that the applicant's father is a U.S. citizen.

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. *Supra*.

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-Munoz 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 these precedent legal decisions to 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 sister and his approved immigrant visa petition.

The AAO finds that the unfavorable factors in this case include the applicant's misrepresentation and presentation of fraudulent documentation in an attempt to enter the United States; his illegal entry into the United States after having been removed; and his extended unlawful presence and employment in the United States.

The applicant in the instant case has multiple immigration violations. 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.

The AAO notes that the record indicates that the applicant may be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), based on his 1995 attempt to obtain entry into the United States by fraud. To seek a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), the applicant would file an Application for Waiver of Ground of Inadmissibility (Form I-601).

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish 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.