

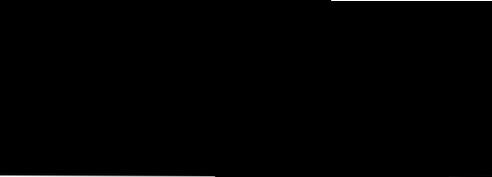


U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAY 15**

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:



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 Acting Director, Vermont 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 the Dominican Republic who entered the United States without inspection on September 26, 1991. *Order to Show Cause.* On January 31, 1992 the immigration judge ordered the applicant deported in absentia. *Decision and transcript of hearing of the immigration judge,* dated January 31, 1992. The applicant filed an appeal to the Board of Immigration Appeals which was dismissed on July 9, 1992. *Decision of the Board of Immigration Appeals,* dated July 9, 1992. The applicant departed the United States on October 16, 1992. *Warrant for Deportation.* The applicant returned to the United States to be with his lawful permanent resident spouse. *Statement from the applicant,* dated November 10, 2005. The applicant has resided in the United States continuously since 1993. *Form G-325A, Biographic Information sheet, for the applicant.* Electronic records available to CIS do not establish that the applicant executed a lawful admission. *Decision of the Acting Director,* dated February 7, 2006. On November 25, 1996 the applicant filed a Form I-212, Application for Permission to Reapply for Admission Into the United States after Deportation or Removal and on December 16, 1996 the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) approved the applicant's Form I-212. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status on April 19, 1999 pursuant to an approved Form I-130 dated February 9, 1994. On February 14, 2005, the applicant submitted a second Form I-212, which CIS denied on January 9, 2006. In her decision, the Acting Director noted that although the applicant had received an approval for a Form I-212, he did not apply for a visa at an American Consulate or report for inspection at a port of entry. *Decision of the Acting Director,* dated February 7, 2006. The applicant is inadmissible pursuant to 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 lawful permanent resident spouse and their five children, three of whom are lawful permanent residents and two of whom are U.S. citizens. *Form I-485.*

The Acting Center Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *Decision of the Acting Director,* dated February 7, 2006.

On appeal, counsel states that the Director's decision was arbitrary and capricious in failing to give sufficient weight to the equities of this case. *Form I-290B.* The AAO notes that counsel indicates that he intends to submit a brief and/or evidence within 30 days of filing the Form I-290B. On March 1, 2007, the AAO notified counsel that it had received no brief and/or evidence in support of the appeal and asked him to resubmit any materials previously provided within five business days. As of this date, no response has been received. Accordingly, the record is complete. All file materials have been reviewed in reaching a decision in this matter.

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.

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-Numoz 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 married his U.S. citizen spouse on February 20, 1993, over one year after he was ordered deported in absentia. 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 be accorded appropriate weight. The applicant and his spouse have five children, ages 11, 13, 16, 17, and 19 years old. Three of their children are lawful permanent residents, while two are U.S. citizens. *Form I-485*. The applicant stated that he is the sole support of his family, as his spouse does not work, and that he owns two properties, which his family will lose if his application is denied. *Statement from the applicant*, dated November 10, 2005. Additionally, he asserted that his children would be psychologically impacted if he were absent from their family. *Id.* The AAO notes that apart from the applicant's statements regarding his property ownership, the record does not include documentation to support his assertions. The record does not include letters of support from family members or friends. There is nothing in the record addressing any type of health issue that may affect the applicant or his family. Apart from the applicant's statement, the record does not address how the applicant's family would be affected financially without the applicant.

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. The AAO will consider the hardship to the applicant's spouse and children, but it will be just one of the determining factors.

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.*

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his U.S. citizen spouse and their five children, two of whom are U.S. citizens and three of whom are lawful permanent residents; an approved Form I-130; the prospect of hardship to his family; and the absence of a criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his reentry without permission after his removal, and his periods of unauthorized presence and employment.

While the AAO acknowledges the favorable factors in this case, it notes that the record lacks documentation regarding financial and emotional hardship to the applicant's family, family responsibilities the applicant may have, and supporting documentation regarding the applicant's moral character. The applicant's actions in this matter cannot be condoned. 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 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.