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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: PROVIDENCE, RI

Date: **AUG 22 2008**

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 Field Office Director, Providence, Rhode Island 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 Colombia who, on March 27, 2000, married her lawful permanent resident spouse, [REDACTED], in Colombia. On April 12, 2000, the applicant applied for a nonimmigrant visa at the U.S. Embassy in Bogota, Colombia. The applicant's application for a nonimmigrant visa was denied for fraud 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). On July 5, 2000, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On August 26, 2000, the applicant appeared at the Miami, Florida International Airport. The applicant presented a Colombian passport and U.S. nonimmigrant visa under the name "[REDACTED] [REDACTED]." The immigration officer initially admitted the applicant to the United States under this alias. After the customs officer noticed that the applicant was not the person who appeared in the passport, she was referred to secondary inspections where it was discovered and the applicant admitted that she was not the lawful bearer of the passport and visa. The applicant's admission was revoked and she was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to obtain admission to the United States by fraud. At the time of apprehension, the applicant indicated a fear of returning to her home country. The applicant was scheduled for a credible fear interview. On September 8, 2000, the applicant was placed into immigration proceedings pursuant to credible fear interview procedures. On May 15, 2001, the immigration judge denied the applicant's applications for asylum and withholding of removal and ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On May 8, 2002, the Form I-130 was approved. On October 24, 2002, the BIA dismissed the applicant's appeal. On October 3, 2003, a warrant for the applicant's removal was issued. On December 4, 2004, the applicant filed the Form I-212. The applicant applied for and was granted a stay of removal until March 31, 2005.¹ While the applicant applied for further stays of removal, the record does not indicate that the applicant has been granted additional stays of removal. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She 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 reside in the United States with her lawful permanent resident spouse and son and her U.S. citizen son.

The field officer director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision* dated February 22, 2007.

On appeal, counsel contends that the field office director abused her discretion and gave improper weight to the applicant's fraud and subsequent court testimony. Counsel contends that the field office director failed to consider all relevant factors bearing on the family's hardship in the applicant's case. *See Counsel's Brief*, dated March 16, 2007. In support of her contentions, counsel submits the death certificate of [REDACTED] mother, copies of his passport, 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) of the Act states in pertinent part:

¹ The AAO notes that while the field officer director indicated that the applicant has been granted another extension of stay of deportation until March 31, 2006, the record does not contain evidence to establish that such an extension of stay was ever issued.

(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.

The record reflects that [REDACTED] is a native and citizen of Colombia who became a lawful permanent resident in 1999. The applicant and [REDACTED] have a 13-year old son who is a native and citizen of Colombia who became a lawful permanent resident in 1999. The applicant and [REDACTED] have a seven-year old son who is a U.S. citizen by birth. The applicant is in her 30's and [REDACTED] 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 field office director based the denial of the applicant's Form I-212 principally on the belief that the applicant has failed to show reformation of character due to the alleged fraud concerning her asylum application, her use of a false passport and her subsequent testimony in immigration court. Counsel asserts that the applicant used the false passport because she feared returning to Colombia. Counsel asserts that the applicant never denied that she also intended to join her husband in the United States.

Counsel asserts that the field office director erred in finding that the applicant's family would not suffer extreme hardship if the applicant has to return to Colombia. Counsel asserts that, while [REDACTED] has returned to Colombia on a number of occasions, he returned due to the illness and subsequent death of his mother from kidney disease and related complications. Counsel asserts that the field office director erred in concluding that [REDACTED]' travel to Colombia was casual and frequent. Counsel asserts that the applicant's lawful permanent resident son is in 6th grade and he now speaks more English than Spanish. Counsel asserts that this son is very involved socially with friends in school. Counsel asserts that he also had an accident in 2004, from which he suffered significant internal bleeding and pain and lost eight days in school. Counsel asserts that he required the attention of a doctor and some follow-up appointments. Counsel

asserts that the applicant's youngest son goes to kindergarten and is now accustomed to English. Counsel asserts that the applicant suffers from an inflamed muscle in her left thigh, which, occasionally becomes irritated and causes severe pain. Counsel asserts that, as a result, the applicant goes to the emergency room two to three times per year and takes medication to reduce the inflammation. Counsel asserts that Mr. [REDACTED] provides extra help in the home and with the children when the applicant suffers from this condition.

Counsel asserts that [REDACTED] separation from the applicant if she returned to Colombia would cause an extreme strain on their marriage. Counsel asserts that the separation will cause [REDACTED] great emotional suffering and hardship. Counsel asserts that, if the applicant's and [REDACTED] children remained with their father in the United States, they would miss the daily contact with their mother. Counsel asserts that Mr. [REDACTED] would incur financial costs due to child-care and the emotional cost of seeing his children living without their mother. Counsel asserts that [REDACTED] would suffer the extra financial burden of supporting two households in separate countries.

Counsel asserts that the applicant would take the children with her to Colombia if she is forced to return, which would result in a split family. Counsel asserts that it would be difficult for the applicant and the children to obtain necessary medical attention in Colombia. Counsel asserts that the family does not have sufficient financial resources to pay for the required medical care and it is unlikely that they would be able to obtain health insurance to cover such costs. Counsel asserts that the chaotic situation in most areas of Colombia due to war would also affect their ability to obtain medical care. Counsel asserts that the applicant's and [REDACTED] children would have to begin schooling in Spanish, which is now a second language for them. Counsel asserts that the applicant's children would be subject to violence and kidnappings, which continue to be rampant in Colombia. Counsel asserts that those returning from the United States are especially vulnerable to kidnappings by guerillas looking for ransom money. Counsel asserts that the applicant's family has already been targeted by the guerillas and it would be likely that she and the children would be more vulnerable to attacks and threats. Counsel asserts that, if the children accompanied the applicant to Colombia, they would be denied day-to-day contact with their father. Counsel asserts that it would be impossible for Mr. [REDACTED] to live with his family in Colombia because if he remained outside the United States for too great a period he would lose his permanent resident status. Counsel asserts that [REDACTED] would only be paid a fraction of his current salary in Colombia. Counsel asserts that it is likely that [REDACTED] would be unable to earn sufficient income to support his family in Colombia. Counsel asserts that [REDACTED]' ability to support his family is much greater in the United States.

[REDACTED], in his declarations, states that the field office director incorrectly interpreted his trips to Colombia. He states that his trips to Colombia were not for pleasure, but strictly to visit his ailing mother and to attend her funeral. He states that he had to borrow money from family and friends in order to travel to Colombia. He states that travel to Colombia is very expensive and he does not have the means to travel with such frequency purely for pleasure. He states that the applicant left Colombia fearing for her safety. He states that he filed a petition for the applicant in June 2000 and had intended to wait for processing of this application until the threats against his wife made her fearful and she decided to come to the United States early, hoping that they could be reunited without risking her life in Colombia. He states that his oldest son does well in school and now speaks more English than Spanish. He states that this son his socially active with friends in school. He states that his youngest son is cared for at home. He states that he and the applicant work different shifts on order to ensure that they can spend time with their children. He states that his oldest son also had an accident in 2004, from which he suffered significant internal bleeding and pain and lost eight days

in school. He states that this son required the attention of a doctor to determine if further intervention should be given. He states that the applicant suffers from an inflamed muscle in her left thigh, which, occasionally becomes irritated and causes severe pain. He states that, as a result, the applicant goes to the emergency room two to three times per year and takes medication to reduce the inflammation. He states that he provides extra help in the home and with the children when the applicant suffers from this condition. He states that it would be difficult for the applicant and the children to obtain necessary medical attention in Colombia. He states that the family does not have sufficient financial resources to pay for the required medical care and it is unlikely that they would be able to obtain health insurance to cover such costs. He states that the chaotic situation in most areas of Colombia due to war would also affect their ability to obtain medical care. He states that his oldest son would have to begin schooling in Spanish, a language to which he is now unaccustomed. He states that his children would be subject to violence and kidnappings, which continue to be rampant in Colombia. He states that those returning from the United States are especially vulnerable to kidnappings by guerillas looking for ransom money. He states that the applicant's family has already been targeted by the guerillas and it would be likely that she and the children would be more vulnerable to attacks and threats. He states that his children would be denied day-to-day contact with their father. He states that the children would also lose adequate attention from their mother when she is medically incapacitated. He states that it would be virtually impossible for the applicant to obtain sufficient employment to support the family in Colombia. He states that he would support them financially, which would be an extremely difficult situation.

The applicant, in her declaration, states that she fled Colombia fearing for her safety and that, even though her situation may not rise to the level of persecution or fit the legal definitions of a refugee, it does not negate the fact that she truly feared for her life. She states that, in 1997, guerillas began to extort money from her father, threatening harm to his children if he did not pay. She states that the guerillas came to see her father approximately every four months until she left Colombia. She states that even after she left Colombia her mother received threatening telephone calls. She states that she decided to seek a visa in 1998, which was denied and that, she subsequently encountered a man claiming to be an employee of the U.S. Embassy who provided her with a passport. She states that this man assured her that, even though the passport was not in her name, it was perfectly legal for her to use it.

The applicant states that her oldest son with [REDACTED] does well in school but would have to begin schooling in Spanish, a language to which he is now unaccustomed. She states that this son is socially active with friends in school. She states that her youngest son is cared for at home. She states that she and Mr. [REDACTED] work different shifts on order to ensure that they can spend time with their children. She states that her oldest son recently had an accident, from which he suffered significant internal bleeding and pain and lost eight days in school. She states that this son required the attention of a doctor to determine if further intervention should be given. She states that she suffers from an inflamed muscle in her left thigh, which, occasionally becomes irritated and causes severe pain. She states that, as a result, she goes to the emergency room two to three times per year and takes medication to reduce the inflammation. She states that it would be difficult for her and the children to obtain necessary medical attention in Colombia. She states that the family does not have sufficient financial resources to pay for the required medical care and it is unlikely that they will be able to obtain health insurance to cover such costs. She states that the chaotic situation in most areas of Colombia due to war would also affect their ability to obtain medical care. She states that, in Colombia, her children would be subject to violence and kidnappings, which continue to be rampant. She states that those returning from the United States are especially vulnerable to kidnappings by guerillas looking for ransom money. She states that her family has already been targeted by the guerillas and it would be likely that she and the children would be more vulnerable to attacks and threats. She states that her children would be

denied day-to-day contact with their father. She states that the children would also not receive adequate attention from her when she is medically incapacitated.

The applicant states that, even though her parents have separated, they remain in Colombia. She states that her mother and her oldest son who lives who lives in Colombia count on the financial support she sends them, and have no other income on which to live. She states that her oldest son would be forced to quit school and seek employment if she had to return to Colombia.

A letter from [REDACTED], English as a Second Language (ESL) Teacher, Grade 2, dated November 18, 2002, states that the applicant and [REDACTED] oldest son has attained a high intermediate to advanced level of English proficiency and continues to make progress in reading and writing skills. It states that the stress his family would endure in a painful move would affect him emotionally, psychologically and academically. A letter from [REDACTED], ESL Teacher, Grade 3, dated January 24, 2004, states that the applicant and Mr. [REDACTED] oldest son has attained a high intermediate level of English proficiency and continues to make progress in reading and writing skills. It states that the stress his family would endure in a difficult move would affect him emotionally and academically. A letter from [REDACTED] ESL Teacher, Grade 4, dated November 18, 2004, indicates that the applicant and [REDACTED] oldest son attended the school for three years and is a good and hardworking student. She states that a positive and supportive family environment is crucial to the development of children and that the applicant's absence from the home would be detrimental to her son's development and success in the future. A standard form from [REDACTED] at the Calcutt Middle School, dated November 21, 2006, states that the applicant and [REDACTED] eldest son has been enrolled at the school since August 31, 2006 and is currently in Grade 6.

A letter from [REDACTED] at the Early Learning Center, dated November 22, 2006, states that the applicant's youngest son is currently enrolled at the Captain Hunt School in kindergarten.

Several letters from Mineral Springs Pediatrics state that the applicant and [REDACTED]' youngest son has been a patient since 2001. It states that he was born with respiratory distress and was given special care for several days. It states that he is now developing nicely in a nurturing environment.

A letter from Mineral Springs Pediatrics state that the applicant's oldest son has been a patient since 2000. It states that he was seen in the emergency room in October 2004 due to testicular pain and his condition required him to follow up with a urologist in January 2005.

An initial report from the Advanced Spine Centers of Rhode Island, dated June 13, 2003, indicates that the applicant was involved in a motor vehicle accident. It states that she complained of neck pain and lower back pain with radiation into the left leg and down to the foot. It states that she was given working diagnoses of hyperflexion/hyperextension injury to the cervical spine and a sprain/strain to the lumbar region with radiation into the left lower extremity. It states that the applicant is considered totally disabled with restrictions on lifting, bending and prolonged postures or strenuous activities. It states that her treatment will involve corrective chiropractic adjustments and related physiotherapies and that her prognosis is considered to be fair.

Country conditions reports indicate that human rights violations were mainly committed by illegal armed groups, which include the Revolutionary Armed Forces of Colombia (FARC). FARC's human rights violations included unlawful and political killings, kidnappings, forced disappearances, killings of off-duty

members of public security forces, killings of local officials, massive forced displacements, suborning and intimidation of judges, prosecutors and witnesses, infringement on citizens privacy rights, restrictions on freedom of movement, widespread recruitment of child soldiers, attacks against human rights activists, harassment, intimidation and killings of teachers and union leaders, and use of female conscripts as sex slaves. See section on Colombia from the 2005 *United States Department of State Country Reports on Human Rights Practices*.

The AAO notes that the applicant has provided sworn testimony in a November 2004 declaration submitted with the Form I-212, asserting that she was not aware that the passport she used in her attempt to enter the United States was not valid. A Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act (Form I-867B), dated August 26, 2000, indicates that, despite the applicant's claims to the contrary, she was aware that she was presenting a fraudulent document to enter the United States and that it was illegal for her to do so. It also indicates that the applicant was clearly aware that she was not entitled to enter the United States.

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-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.

As established by the record, the favorable factors in this matter are the applicant's lawful permanent resident spouse and son, her U.S. citizen son, the general hardship the applicant's family will suffer if the applicant is denied admission and a pending immigrant visa petition. The AAO notes that the birth of the applicant's U.S. citizen son and the filing of the immigrant visa petition benefiting her occurred after the applicant was placed into immigration proceedings. These factors are a "after-acquired equities" and the AAO accord them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's attempt to obtain a visa by fraud in 2000; her attempt to enter the United States by fraud in 2000; her inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act for fraud; her extended unlawful presence and employment in the United States; and her continued presentation of fraudulent testimony in regard to immigration benefits.

The applicant in the instant case has multiple immigration violations. The totality of the evidence demonstrates 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 she 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.