



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **AUG 26 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 Director, Vermont 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 sustained and the application approved.

The applicant is a native and citizen of Guatemala who, on October 30, 1983, was placed into immigration proceedings after she entered the United States without inspection. On November 2, 1983, the immigration judge ordered the applicant removed from the United States. On November 14, 1983, the applicant was removed from the United States and returned to Guatemala. On February 12, 1985, the applicant attempted to enter the United States at the San Diego, California Port of Entry by making a false claim to U.S. citizenship. The applicant was refused admission and returned to Guatemala. In May 1985, the applicant reentered the United States without permission or admission. On June 25, 1992, the applicant's mother, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on October 2, 1992. On June 14, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On November 12, 2000, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601), which was approved on May 7, 2001. On December 11, 2003, the applicant's Form I-485 was terminated. On May 27, 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). 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 mother and four U.S. citizen children.

The director determined that the applicant was mandatorily inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act and no purpose would be served in adjudicating the Form I-212. The director denied the Form I-212 accordingly. *See Director's Decision* dated April 25, 2007.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act and is eligible for permission to reapply for admission. *See Counsel's Brief*, dated May 18, 2007. In support of his contentions, counsel submits the referenced brief, a copy of a legal memorandum and a copy of the applicant's approved Form I-601. The entire record was considered in rendering a decision in this case.

Counsel contends that the director erred in finding the applicant inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act because the applicant made the false claim to U.S. citizenship prior to September 30, 1996.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (ii) Falsely claiming citizenship. –
 - a. In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

b. Exception-

In the case of an alien making a representation described in subclause (I), if each natural parents of the alien . . . is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

While the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, she does require a waiver of inadmissibility under section 212(i), 8 U.S.C. § 1182(i), for inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). As previously noted, the applicant has already been granted a waiver of this ground of inadmissibility. See *Form I-601*, approved May 7, 2001.

The AAO notes that both the director and counsel state that the applicant is inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). However, in order to be found inadmissible pursuant to section 212(a)(9)(C) of the Act, an applicant, while he or she may have been ordered removed prior to April 1, 1997, must have unlawfully reentered the United States or attempted unlawful reentry after April 1, 1997, the effective date of the provision. See *Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs* dated June 17, 1997. The AAO, therefore, finds that the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act because her unlawful reentry into the United States occurred prior to April 1, 1997. Still, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and must receive permission to reapply for admission.

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.

The record reflects that [REDACTED] is a native and citizen of Guatemala who became a lawful permanent resident in 1987. The applicant has never been married. The applicant has a 22-year old daughter, a 20-year old son, an 18-year old son and a 13-year old son who are all U.S. citizens by birth. The applicant is in her 40's and [REDACTED] is in her 70's.

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

The applicant, in her affidavit, states that she is the mother of four U.S. citizen children who would suffer hardship if she were to be removed from the United States. She states that she did not intend to violate U.S. immigration laws and apologizes for doing so. She states that she works as a homecare assistant. She states that she and her children would be in desperate financial circumstances if she were unable to work and her children would require public assistance. She states that her mother is a lawful permanent resident. She states that it would be worse if her children had to leave their lives in the United States. She states that the children would be unable to uproot their lives and are completely unfamiliar with the language, values, and culture of present-day Guatemala. She states that she is from a small town in Guatemala, which is regulated by corrupt police officers and consists of tightly packed homes. She states that the people live in extreme poverty and are suppressed by a dictatorial government. She states that she would find it difficult to obtain employment. She states that her children, as U.S. citizens, would have no legal right to live in Guatemala and be impoverished. She states that the economic conditions in Guatemala are bad. She states that the education system is staffed

with unqualified teachers, which leaves children uneducated and unprepared for life outside of Guatemala. She states that her children would be precluded from pursuing their education and be condemned to a life of poorly paid, unskilled and irregular work. She states that if the children returned to the United States they would only be able to find minimum wage employment, as they will be people with limited English speaking and writing skills. She states that articles report that radioactive or toxic chemical sites associated with Guatemala's former defense industries are found throughout the country and pose a health risk. She states that if the family fell ill as a result of exposure to these pollutants, they would be unable to afford medical care. She states that the hospitals are poorly equipped, understaffed and people generally die from ailments easily treated in the United States. She states that her daughter suffers from asthma, which makes visits to emergency room necessary at times. She states that her daughter must always carry an albuterol-inhaler at all times and the humidity, dust and chemical pollution would aggravate her condition. She states that her son, [REDACTED], is learning disabled and Guatemalan teachers and administrators are not trained or prepared to help such a child. She states that she and her children have experienced a deep sense of tension and anxiety when faced with the possibility of returning to Guatemala. She states that her children would find it hard to adjust to life and be the target of hate. She states that seeking treatment for an adjustment disorder and anxiety would be impossible for her and her children because such problems are not dealt with in a healthy manner in Guatemala. She states that she and her children share a bond of love that cannot be broken and her children deserve the freedom and opportunity that the United States offers. She states that her children fear the loss of their mother and feel like young orphans at that thought. She states that she wants to provide her children with loving and fulfilling lives.

[REDACTED], in her affidavit, states that she is the mother of the applicant and grandmother to the applicant's four U.S. citizen children who would suffer hardship if she were to be removed from the United States. She states that the applicant did not intend to violate U.S. immigration laws and has never committed a crime. She states that the applicant works as a homecare assistant. She states that she and her grandchildren would be in desperate financial circumstances if the applicant was unable to work and they would require public assistance. She states that she needs the applicant's help with her daily activities. She states that the applicant also provides her with substantial financial help, without which she would find it hard to survive. She states that her grandchildren would be unable to uproot their lives and are completely unfamiliar with the language, values, and culture of present-day Guatemala. She states that she is from a small town in Guatemala, which is regulated by corrupt police officers and consists of tightly packed homes. She states that the people live in extreme poverty and are suppressed by a dictatorial government. She states that she would find it difficult to obtain employment in Guatemala because of her age and lack of connections. She states that her grandchildren, as U.S. citizens, would have no legal right to live in Guatemala and be impoverished. She states that the economic conditions in Guatemala are bad. She states that the education system is staffed with unqualified teachers and would leave her grandchildren uneducated and unprepared for life outside of Guatemala. She states that her grandchildren would be precluded from pursuing their education and be condemned to a life of poorly paid, unskilled and irregular work. She states that if her grandchildren returned to the United States they would only be able to find minimum wage employment, as they will be people with limited English speaking and writing skills. She states that articles report that radioactive or toxic chemical sites associated with Guatemala's former defense industries are found throughout the country and pose a health risk. She states that if the family fell ill as a result of exposure to these pollutants, they would be unable to afford medical care. She states that the hospitals are poorly equipped, understaffed and people generally die from ailments easily treated in the United States. She states that her granddaughter suffers from asthma, which makes visits to emergency room necessary at times. She states that her granddaughter must always carry an albuterol-inhaler at all times and the humidity, dust and chemical pollution would aggravate her

condition. She states that her grandsons [REDACTED] and [REDACTED] are learning disabled and Guatemalan teachers and administrators are not trained or prepared to help such children. She states that she and her grandchildren have experienced a deep sense of tension and anxiety when faced with the possibility of returning to Guatemala. She states that her grandchildren would find it hard to adjust to life and be the target of hate. She states that seeking treatment for an adjustment disorder and anxiety would be impossible for her and her grandchildren because such problems are not dealt with in a healthy manner in Guatemala. She states that she and her grandchildren share a bond of love with the applicant that cannot be broken and her grandchildren deserve the freedom and opportunity that the United States offers. She states that her grandchildren fear the loss of their mother and feel like young orphans at that thought. She states that the applicant is a person of good moral character.

Country conditions reports in the record state that Guatemala struggles with some of the lowest social indicators in the hemisphere. They state that 56 to 75 percent of the population live in poverty. They state that Guatemala has one of the worst infant mortality rates in the region and that chronic malnutrition remains a serious problem. They state that more than two million children do not attend school and that only three of ten children will graduate from sixth grade and one in twenty attends high school. They state that drug trafficking, money laundering and corruption are major problems.

A letter from [REDACTED], states that the applicant's daughter has been his patient since April 23, 2003 due to chronic b. asthma for which she needs special treatment. An individualized Education Program Report from the New York City Board of Education reflects that the applicant's son, [REDACTED] has a learning disability for which he required special education teacher support services and counseling in 2003. A second individualized Education Program Report from the New York City Board of Education reflects that the applicant's son, [REDACTED], has a speech or language impairment for which he required special education teacher support services and related services of speech and language therapy in 2005.

Tax records reflect that the applicant paid federal taxes from 1997 through 2003. The applicant was issued employment authorization for the year of 2003.

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 mother, her four U.S. citizen children, the hardship to the applicant and her family members in the event of her removal, the absence of a criminal record, payment of federal taxes, an approved waiver of inadmissibility and an approved immigrant visa petition. The AAO notes that the birth of the applicant's children, and the filing of the waiver application and immigrant visa petition benefiting her occurred after the applicant was placed into immigration proceedings. The applicant's children and approved waiver application and immigrant visa petition are "after-acquired equities" and the AAO, therefore, accords them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; her false claim to U.S. citizenship in 1983; her reentry into the United States after having been removed; and her extended unauthorized presence and employment in the United States.

The applicant's original illegal entry into the United States, her false claim to U.S. citizenship, her reentry into the United States after having been removed, and her extended unauthorized presence and employment, cannot be condoned. However, the AAO finds that given all of the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.