



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: NEW YORK, NY
RELATES)

Date:

DEC 02 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)

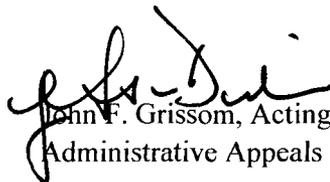
ON BEHALF OF APPLICANT:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, 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 the Dominican Republic who, on May 7, 1988, appeared at Miami International Airport. The applicant presented a photo-substituted Dominican passport bearing the name "██████████." The applicant was found inadmissible pursuant to former sections 212(a)(19) and 212(a)(20) of the Immigration and Nationality Act (the Act), (currently sections 212(a)(6)(C)(i) and 212(a)(7)(i)(I) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(i)(I)), for attempting to enter the United States by fraud and being an immigrant without valid documents. On the same day, the applicant was placed into immigration proceedings. On May 29, 1988, the applicant was removed from the United States pursuant to sections 212(a)(19) and 212(a)(20) of the Act. On December 7, 1995, the applicant married Ramires Rosa-██████████, a lawful permanent resident, in Manhattan, New York. On April 17, 1997, ██████████ filed a Petition for Alien Relative (Form I-130) filed on behalf of the applicant, which was approved on August 7, 1997. On September 16, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On December 5, 2001, the applicant filed the Form I-212. On October 30, 2006, the applicant appeared at the New York District Office. The applicant testified that she had reentered the United States without a lawful admission or parole and without permission to reapply for admission on October 10, 1990. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A). 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 remain in the United States with her lawful permanent resident spouse.

The district director determined that a favorable exercise of discretion was not warranted and denied the Form I-212 accordingly. *See District Director's Decision* dated August 24, 2007.

On appeal, counsel contends that the director erred in denying the applicant's Form I-212. Counsel also contends that the applicant is not inadmissible pursuant to section 212(a)(9)(A) of the Act. *See Form I-290B*, dated September 6, 2007. In support of the appeal, counsel submits the referenced Form I-290B 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:

(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.

On appeal, counsel contends that the applicant is not required to apply for permission to reapply for admission to the United States because she was only barred for a period of five years by her 1988 exclusion order and she is seeking admission by virtue of her application for adjustment of status more than ten years after her removal from the United States. Section 212(a)(9)(A)(ii) of the Act, holding aliens inadmissible for a period of ten years, applies to exclusion or deportation orders issued both before and after April 1, 1997, the effective date of section 212(a)(9)(A) of the Act. *See Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs, dated March 31, 1997.* Furthermore, an applicant must remain outside the United States for the required period of inadmissibility, unless he or she obtains permission to reapply for admission. The applicant failed to remain *outside* the United States for the required period. The AAO finds that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), and, therefore, must receive permission to reapply for admission to the United States.

The record reflects that [REDACTED] is a native and citizen of the Dominican Republic who became a lawful permanent resident in 1975. The applicant has an 18-year old daughter who is a native and citizen of the Dominican Republic. While counsel asserts that the applicant has a U.S. citizen child and two lawful permanent resident children, there is no evidence in the record to establish that two other children exist or that any of the children has lawful status in the United States. The applicant and [REDACTED] are in their 40's.

On appeal, counsel asserts that the district director failed to consider the applicant's lawful permanent resident husband; the absence of a criminal record; the applicant's residence in the United States for over seventeen years; the applicant's status as a taxpayer and property owner in the United States; and that the applicant's removal occurred more than nineteen years ago.

Tax records establish that the applicant and her spouse filed joint federal taxes in 2005. The record reflects that the applicant has not been employed in the United States. The record does not establish that the applicant and her spouse own any property in the United States.

The record reflects that the applicant is not only inadmissible pursuant to section 212(a)(6)(C)(i) of the act, but she is also inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing unlawful presence from April 1, 1997, the date on which the unlawful presence provision was

enacted, and September 16, 2002, the date on which she filed the Form I-485, and seeking admission within ten years of her last departure, which occurred in 2003.¹

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.

¹ The record reflects that, on October 25, 2002, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advanced parole authorization to depart and return to the United States on January 10, 2003, and April 29, 2003.

As established by the record, the favorable factors in this matter are the applicant's lawful permanent resident spouse, the absence of a criminal background, her payment of federal taxes, and the approved immigrant visa petition filed on her behalf. The AAO notes that the applicant's marriage and the filing of the immigrant visa petition occurred after the applicant was placed into immigration proceedings. They are, therefore, "after-acquired equities," to which the AAO accords diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's attempt to obtain admission to the United States by fraud in 1988; her inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act; her illegal reentry into the United States after removal; her extended unlawful presence in the United States until September 16, 2002; and her inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The applicant's attempt to obtain admission to the United States by fraud in 1988, her illegal reentry into the United States after removal, her extended unlawful presence, and her inadmissibility pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, cannot be condoned. The AAO finds that given all of the circumstances of the present case, the applicant has not 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 dismissed.

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 not established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.