



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

HL

FILE:

Office: VERMONT SERVICE CENTER

Date:

DEC 12 2008

IN RE:

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:

Self-represented

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 or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom, Acting 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 dismissed.

The applicant is a native and citizen of the Dominican Republic who, on January 8, 1990, was admitted to the United States as a lawful permanent resident. On May 26, 1992, the applicant was convicted of possession of gambling records in the second degree, in violation of section 225.15 of the New York Penal Law (NYPL) and was sentenced to a fine. On December 20, 1993, the applicant was convicted of attempted criminal possession of a weapon in the second degree in violation of sections 110 and 265.03 of the NYPL. The applicant was sentenced to one day in jail and five years of probation. On June 18, 1996, the applicant was placed into immigration proceedings. On October 17, 1996, the immigration judge ordered the applicant removed from the United States pursuant to section 241(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(C), for having been convicted of a firearms violation. The applicant appealed to the Board of Immigration Appeals (BIA). On May 27, 1997, the appeal before the BIA was withdrawn. On June 18, 1997, a warrant for the applicant's removal was issued. On November 21, 2005, the applicant's U.S. citizen son, [REDACTED], filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On January 30, 2006 the applicant filed the Form I-212. On April 7, 2006, the Form I-130 was approved. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) as an alien who departed the United States after being ordered removed. The applicant requests 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 his U.S. citizen son and two lawful permanent resident sons.

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated May 30, 2007.

On appeal, the applicant contends that he submits additional facts and evidence to establish his rehabilitation, He contends that he is a law abiding citizen who has several relatives who currently reside in the United States, including his three sons, his mother and his siblings, who all testify to his moral character and reformed behavior. *See Form I-290B*, dated June 15, 2007. In support of his contentions the applicant submits the referenced Form I-290B, clearance letters, a certification of his enrollments in law school and letters of support from friends, family and colleagues. The entire record was reviewed in rendering a decision in this case.

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 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 Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On December 20, 1993, the applicant pled guilty to attempted criminal possession of a weapon in the second degree in violation of section 265.03 of the NYPL. The record of proceedings indicates that the applicant was subsequently ordered removed from the United States as a lawful permanent resident who, after admission to the United States, was convicted of a firearms violation. On the Form I-212, the applicant indicates that he departed the United States on December 1, 1998, and has resided in the Dominican Republic since that date. The record does not indicate that the warrant for removal issued against the applicant was executed. The AAO notes that the applicant claims to have left the United States in 1998, but does not find the record to provide evidence to support this claim. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the AAO finds that the applicant departed the United States while an order for his removal was outstanding and, as the record does not establish his departure occurred more than ten years ago, he is inadmissible to the United States pursuant to section 212(a)(9)(A)(ii)(II) of the Act.

In *Henry v. Bureau of Immigration & Customs Enforcement*, 493 F. 3d 303 (3<sup>rd</sup> 2007), the Third Circuit Court of Appeals (Third Circuit) upheld the Board of Immigration Appeals (BIA) finding that a conviction under section 265.03 of the NYPL was a crime of violence and, as it resulted in a sentence of more than one year, an aggravated felony. Although the applicant in the present case was convicted under this same statute, the applicant was sentenced to one day in jail and five years probation. Accordingly, the AAO concludes that the record does not demonstrate that the applicant committed an aggravated felony, which, as he was admitted to the United States as a lawful permanent resident, would permanently bar him from the United States pursuant to section 212(h) of the Act and, thus, render the AAO's consideration of his Form I-212 moot. However, the applicant has been convicted of a crime involving moral turpitude and is, therefore, inadmissible to the United States under 212(a)(2)(A)(i)(I) of the Act.<sup>1</sup>

The record reflects that the applicant has a 27-year old son who is a native of the Dominican Republic who became a lawful permanent resident in 1994 and a naturalized U.S. citizen in 2005.

---

<sup>1</sup> While there is a waiver available under section 212(h) of the Act, 8 U.S.C. § 1182(h), the applicant committed a crime of violence and an exercise of favorable discretion in granting such a waiver would be subject to the applicant establishing a qualifying relative would suffer exceptional or unusual hardship. *See* 8 C.F.R. § 212.7(d).

The applicant has a 28-year old son and a 20-year old son who are both natives and citizens of the Dominican Republic who became lawful permanent residents in 1994. While the applicant states that his siblings and mother reside in the United States, there is no evidence in the record to establish that they have any lawful immigration status in the United States. The applicant is in his 40's.

On appeal, the applicant states that he sincerely regrets the mistakes of his past and that he has become a law-abiding citizen. He states that he has several relatives in the United States including his U.S. citizen son and two lawful permanent resident sons. He states that his siblings and mother also reside in the United States. He states that these relatives have testified in writing on his behalf and that they should be considered favorable factors.

The applicant, in his letter accompanying the Form I-212, states that since he was removed from the United States his life has completely changed. He states that he is a role model for young people, explaining to them how their conduct in their youth has consequences and how his bad choices resulted in a mistake, which he regrets, and that he is now a changed person. He states that he lived in the United States from the time he was a young boy and that all of his family lives in the United States. He states that it is hard for him to live apart from his family.

Letters of support from the applicant's sons state that the applicant is a law-abiding citizen and hard-working person. They state that their father has changed for the better. They state that at the time he made his mistake, he was working in a grocery store and experiencing a very difficult time in New York. They state that the applicant is a completely rehabilitated person.

Letters of support from the applicant's siblings and family members state that the applicant is a law-abiding citizen and hard-working person. They state that the applicant has changed for the better. They state that, at the time he made his mistake, he was working in a grocery store and experiencing a very difficult time in New York. They state that the applicant is a completely rehabilitated person and is studying to become a lawyer. They state that, since he was removed from the United States, his life has completely changed. They state that the applicant is a role model for young people, explaining to them how their conduct in their youth has consequences and how his bad choices resulted in a mistake that he regrets, and that he is now a changed person. They state that the applicant lived in the United States from the time of his youth and that all of his family lives in the United States. They state that it is hard for the applicant to live apart from his family.

Letters of support from colleagues and professors state that the applicant has good moral attitude, good character, good intellectual capacity and merits their recommendation. They state that he is a very sincere, honest, responsible person and has a great human quality. They state that he is in the eighth semester of studying law and is a person of respect.

A letter from the public prosecutor's office of the Valverde Judicial District in the Dominican Republic states that they do not have a criminal record for the applicant.

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. *Supra.*

The 7<sup>th</sup> Circuit Court of Appeals 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-Munoz 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 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 U.S. citizen son, two lawful permanent resident sons, the absence of a criminal record since 1993, the general hardship the applicant and his family will suffer, and the immigrant visa petition approved on his behalf. The AAO notes, however, that the filing of the immigrant visa petition on his behalf occurred after he was placed into proceedings. Accordingly, this factor is an "after-acquired equity" and the AAO accords it diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's removal order from the United States as a lawful permanent resident who has been convicted of a firearms violation; his failure to immediately comply with that removal order; his unlawful presence in the United States while he did not comply with that removal order; his convictions for possession of gambling records and attempted criminal possession of a weapon; and his inadmissibility pursuant to section 212(a)(2)(A)(i)(I) of the Act.

The applicant in the instant case has multiple immigration and criminal violations. While the applicant paid his debt to society and has by all accounts turned his life around, his conviction for attempted criminal possession of a weapon in the second degree is a crime of violence and cannot be condoned. 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 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.