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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: JUL 24 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.

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 dismissed.

On September 1, 1990, the applicant was admitted to the United States as a visitor with authorization to stay until December 1, 1990. The applicant remained in the United States past his authorized stay. On December 21, 1994, the applicant filed a Request for Asylum in the United States (Form I-589) under an assumed name. On April 11, 1995, the applicant appeared at the Newark Asylum Office for an asylum interview. On April 18, 1995, the applicant's Form I-589 was referred to an immigration judge and he was placed into immigration proceedings. On October 12, 1995, the applicant was ordered removed *in absentia*. On December 15, 1995, a warrant for the applicant's removal was issued. The applicant failed to depart the United States. On September 30, 2002, the applicant was convicted of felony computer theft and was sentenced to two years of probation. On October 16, 2002, the applicant was convicted of driving under the influence and was sentenced to 37 hours in jail and 12 months of probation. On June 25, 2003, the applicant's probation for computer theft was revoked and he was sentenced to 90 days in jail. On August 7, 2003, the applicant's probation was revoked again and he was sentenced to 99 days in jail. On September 9, 2003, the applicant's probation was revoked for the last time and he was sentenced to 90 days in jail. On June 1, 2004, the applicant was removed from the United States and returned to Ghana. On September 30, 2004, the applicant married his spouse, [REDACTED] in Accra, Ghana. On November 1, 2004, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on August 9, 2005. On October 24, 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). 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 return to the United States and reside with his U.S. citizen spouse.

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 July 28, 2006.

On appeal, [REDACTED] contends that the applicant is a person of good moral character whose mistakes should not prevent him from residing in the United States. She contends that the favorable factors in the applicant's case outweigh the negative factors and that the denial of the Form I-212 will result in hardship to her. *See Form I-290B*, dated August 25, 2006. In support of her contentions, [REDACTED] submits the referenced Form I-290B and a brief. 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.

The record reflects that [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] do not appear to have any children together. The applicant and [REDACTED] are in their 30's.

The AAO finds that the director, in his decision, incorrectly stated that the applicant entered the United States without inspection in 1994. Further, the AAO also finds that the director incorrectly indicated that the applicant's prior Form I-130 was denied based on the possibility that the applicant had entered into a fraudulent marriage with [REDACTED] for immigration purposes. The record reflects that, on April 18, 1995, the applicant married [REDACTED], a U.S. citizen. On September 11, 1995, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Form I-130 [REDACTED] filed on his behalf. On September 8, 1997, the Form I-485 and Form I-130 were denied after the applicant and [REDACTED] failed to appear for an interview. The applicant divorced Ms. [REDACTED] on June 4, 1997. Finally, the AAO notes that the director incorrectly stated that the applicant's current marriage was entered into during immigration proceedings. The record reflects that the applicant married [REDACTED] after he had been removed from the United States and the immigration proceedings against him had been concluded. However, the applicant's marriage to [REDACTED] is an "after-acquired" equity as discussed below.

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

On appeal, [REDACTED] asserts that the applicant's immigration violations alone do not render him a person lacking good moral character. She asserts that the applicant is a person of good moral character. On appeal, [REDACTED] asserts that the applicant has never been charged or convicted of a felony or computer theft and that a fingerprint comparison would show that the person who committed those crimes was not her husband. However, the record reflects that the applicant's fingerprints match an FBI record under his assumed name, establishing that the applicant was convicted of felony computer theft, a crime involving moral turpitude.

On appeal, [REDACTED] asserts that the applicant has made several attempts to legalize his status in the United States and that he remained in the United States in order to financially support his family in Ghana. She asserts that the applicant is remorseful for his actions. She asserts that the applicant's use of an assumed name for the purposes of financially supporting himself and his family and furthering his education is not illegal. However, this assertion is unpersuasive since the applicant's use of a fraudulent name and date of entry into the United States to apply for asylum violates U.S. immigration law. She asserts that the applicant's

conviction for driving under the influence was the result of poor judgment and that people are not infallible. She asserts that the applicant is the beneficiary of an approved immigrant visa petition, he is married to a U.S. citizen spouse, he has not displayed a callous, conscious or malicious intent, he has paid his taxes and he intends to legally adopt his stepson. She asserts that if the applicant is denied permission to reapply for admission she will be forced to move to Ghana, which will result in many hardships to her. She asserts that she currently financially supports the applicant and the applicant has been unable to find employment in Ghana. She asserts that she has been unable to secure an interview for a job in Ghana and she will be unable to survive if she leaves her job in the United States. She asserts that she has a four-year old son from a prior relationship who is too young to receive immunizations to travel to Ghana. She asserts that the applicant has had malaria several times since returning to Ghana and she is concerned that her son would be exposed to such diseases in Ghana. She asserts that she cannot imagine being separated from her son or leaving her family in the United States.

██████████ in a letter accompanying the Form I-212, states that she desperately needs the applicant in the United States with her. She states that she speaks daily to the applicant which is difficult on her budget. She states that she sends money to her husband to support him. She states that they should be given an opportunity to be a regular married couple and live in the same country.

The applicant, in a letter accompanying the Form I-212, states that he did not use his natural name in applying for asylum on the advice of other immigrants who informed him that he would get in trouble because his visa had expired. He states that he used the alias solely to support himself and relatives in Ghana. He states that he did not attend his immigration hearing because he was afraid he would be arrested and removed from the United States. He states that he knew what he did was wrong but that he thought if he worked hard and did everything else correctly he would be able to reapply to legalize his status. He states that he regrets his past decisions. He states that he is a good person. He states that ██████████ supports him emotionally and financially and that they own land together in Ghana.

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. *Supra*.

*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 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 spouse, the general hardship to his spouse, and an approved immigrant visa petition for alien relative. The AAO notes that the applicant's marriage and filing of the immigrant visa petition benefiting him occurred after the applicant was removed from the United States, and are, therefore, "after-acquired equities," which the AAO accords diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant remaining in the United States past his authorized stay; his misrepresentations in filing an asylum application in 1994; his failure to appear before an immigration judge; his convictions for driving under the influence and felony computer theft and his inadmissibility pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I); his extended unlawful presence and employment in the United States; and his inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, between April 1, 1997, the date on which unlawful presence provisions of the Act were enacted, and June 1, 2004, the date on which he departed the United States, and seeking readmission within ten years of his last departure.

The applicant in the instant case has multiple immigration violations and criminal convictions. The totality of the evidence demonstrates that the the favorable factors in the present matter are outweighed by the unfavorable factors.

The AAO notes that the record indicates that the applicant is inadmissible to the United States under sections 212(a)(2)(A)(i)(I), 212(a)(6)(C)(i) and 212(a)(9)(B)(I)(II) of the Act, based on his criminal conviction for felony computer theft, a crime involving moral turpitude, his 1994 attempt to obtain immigration benefits by fraud and his unlawful presence in the United States. To seek a waiver of inadmissibility under sections 212(h), 212(i), and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h), 1182(i) and 1182(a)(9)(B)(v), an

applicant must file an Application for Waiver of Ground of Inadmissibility (Form I-601) at the time he applies for an immigrant visa.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish 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.