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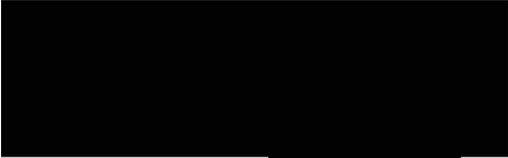
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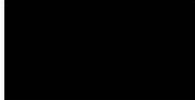
U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER
RELATES)

Date: **MAY 14 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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.

The applicant is a native and citizen of Guatemala who, on January 28, 1999, applied for admission at the John F. Kennedy International Airport. The applicant presented a photo-substituted Guatemalan passport containing a U.S. nonimmigrant visitor visa under the name "[REDACTED]." The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain admission to the United States by fraud. On January 30, 1999, the applicant was placed into immigration proceedings. The applicant filed an Application for Asylum or Withholding of Removal (Form I-589) before the immigration court. On May 22, 2001, the immigration judge denied the applicant's applications for asylum and withholding of removal and ordered her removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On March 20, 2002, the BIA dismissed the applicant's appeal. The applicant failed to comply with the order of removal. On July 17, 2002, the applicant filed a Form I-212, which was denied on August 20, 2003. On August 5, 2005, the applicant married her lawful permanent resident spouse, [REDACTED]. On October 13, 2005, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which remains pending. On June 9, 2006, the applicant filed the Form I-212 that is now before the AAO. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (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 U.S. citizen daughter.

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 June 6, 2007.

On appeal, the applicant contends that she has several favorable factors in her case and her application should be reconsidered. *See Form I-290B*, dated June 20, 2007. In support of her contentions, the applicant submits only the referenced Form I-290B. The entire record was considered 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 of proceedings indicates that the applicant attempted to enter the United States by fraud and was ordered removed by the immigration judge on May 22, 2001. A subsequent appeal to the BIA was dismissed and the applicant failed to comply with the order of removal. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(i) of the Act and, therefore, must receive permission to reapply for admission.

The record reflects that [REDACTED] is a native and citizen of Guatemala who became a lawful permanent resident in 2002. The applicant and [REDACTED] have a seven-year old daughter who is a U.S. citizen by birth. The applicant and [REDACTED] are in their 40's.

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

On appeal, the applicant asserts that she has three favorable factors in her U.S. citizen daughter, lawful permanent resident husband and her lack of a criminal record. The applicant also asserts that she has a pending Form I-130, she entered the United States in 1999 and that her family and whole life are in 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, her U.S. citizen daughter, the general hardship the applicant's family will suffer if the applicant is denied admission, the absence of a criminal record and a pending immigrant visa petition. The AAO notes that the applicant's marriage, the adjustment of status of the applicant's husband, the birth of her U.S. citizen daughter, as well as the filing of the immigrant visa petition benefiting her occurred after the applicant was placed into immigration proceedings. These factors are "after-acquired equities" and the AAO accords them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's attempt to enter the United States through fraud; her failure to comply with an order of removal; and her extended unlawful presence in the United States.

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.

In that the applicant used a photo-subbed passport in an attempt to enter the United States, she is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. To seek a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), the applicant would file an Application for Waiver of Ground of Inadmissibility (Form I-601).

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.