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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK, NY
(RELATES)

Date:

OCT 15 2000

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:



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 District Director, New York City, 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 February 20, 1985, was admitted to the United States as a lawful permanent resident. On May 21, 1986, the applicant pled guilty to and was convicted of possession of unauthorized telephone access devices in violation of Title 18 of the United States Code, section 1029(a)(3). The applicant was sentenced to two years in jail. The applicant's sentence was suspended in favor of six months in jail and five years of probation. On September 25, 1986, the applicant was placed into immigration proceedings. On July 15, 1987, the immigration judge ordered the applicant removed from the United States pursuant to section 241(a)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(4), for having been convicted of a crime of moral turpitude within five years after entry and sentenced to confinement in a prison or corrective institution for a year or more. The applicant appealed to the Board of Immigration Appeals (BIA). On April 3, 1991, the BIA dismissed the applicant's appeal. On April 27, 1993, a warrant for the applicant's removal was issued. The applicant failed to appear for removal or to depart the United States. On February 28, 1996, the applicant appeared at John F. Kennedy International Airport. The applicant presented an I-551 Lawful Permanent Resident Alien Card. The applicant was found to be inadmissible pursuant to sections 212(a)(2)(A)(i)(I), 212(a)(6)(B), and 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), 1182(a)(6)(B), and 1182(a)(7)(A)(i)(I), as an alien convicted of a crime involving moral turpitude, an alien who has entered the United States after having been removed, and immigrant without valid documents to enter the United States. In secondary inspections, the applicant testified that he had departed the United States two months earlier and returned to the Dominican Republic. The applicant was placed into immigration proceedings. On March 8, 1996, the immigration judge ordered the applicant removed. On March 13, 1996, the applicant was removed from the United States and returned to the Dominican Republic, where he has since resided. On August 1, 2007, the applicant's U.S. citizen son, [REDACTED], filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On August 27, 2007, the applicant filed the Form I-212. On February 19, 2008, the Form I-130 was approved. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 his U.S. citizen children.

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 December 21, 2007.

On appeal, counsel contends that the district director did not consider a number of favorable factors in the applicant's case. See *Addendum to Form I-290B*, dated January 17, 2008. In support of the appeal, counsel submits only the referenced Form I-290B and addendum. The entire record was reviewed in rendering a decision in this case.

Section 212(a) 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 December 17, 1987, the applicant filed an Application to Replace Lawful Permanent Resident Card (Form I-90), and appeared at an interview in person in connection with that application at the U.S. Embassy in Santo Domingo, the Dominican Republic, claiming that he was admitted to the United States as a lawful permanent resident and that his lawful permanent resident card had been lost, stolen, destroyed or mutilated. Therefore, the record reflects that the applicant departed the United States while his appeal was pending before the BIA, effectively abandoning his appeal and departing the United States while an order of removal was outstanding. The applicant subsequently reentered the United States illegally, on an unknown date, then departed the United States two months prior to his apprehension by immigration officials on February 28, 1996, followed by his subsequent removal on March 13, 1996. 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), as an alien who has been subsequently removed from the United States and is seeking admission within 20 years of having been removed from the United States and, therefore, must receive permission to reapply for admission to the United States.

The record reflects that the applicant is single. While the applicant claims and his children make reference to five U.S. citizen children, the record establishes that the applicant has a 26-year old son, a 24-year old son, a 19-year old son and a 16-year old son, who are all U.S. citizens by birth. The applicant is in his 40's.

While counsel asserts that the applicant was first admitted as a lawful permanent resident in 1982, the record reflects that the applicant was admitted to the United States as a lawful permanent resident on February 20, 1985. While counsel asserts that the applicant worked lawfully in the United States prior to his removal, the record does not contain documentation to establish the applicant's employment history or payment of taxes in the United States or abroad. While counsel asserts that it has been more than twenty-two years since the applicant's arrest and that the applicant has never been arrested for or convicted of any other crime in the

United States or in the Dominican Republic, the record does not contain police clearance records or recent fingerprint records to establish these assertions. While counsel asserts that the applicant's good moral character prior to and after his removal was not considered, the record reflects that the applicant filed a Form I-90 in 1987 and a second Form I-90, on June 4, 1992, claiming that he was admitted to the United States as a lawful permanent resident and that his lawful permanent resident card was lost, stolen, destroyed or mutilated, after he had been ordered removed from the United States and he was not entitled to receive a lawful permanent resident card because he was no longer a lawful permanent resident of the United States.

On appeal, counsel asserts that the district director did not consider the applicant's children and the affidavits provided by them, which state that the applicant is a good father and a person deserving of the opportunity to reunite with his family. Counsel asserts that the district director failed to consider the immigrant visa petition filed on the applicant's behalf.

The applicant, in an affidavit, states that he entered the United States in 1982 and became a lawful permanent resident in 1985. He states that he was accused of violating long distance calling laws and sentenced to six months of confinement and five years probation with \$5,000 fine, which was completed on May 7, 1991. He states that first he was condemned to the pain just noted and then, after his reintegration into society and the exercise of his civil and political rights, he was removed from the United States for reasons unknown to him to this very day. The AAO notes, however, that the applicant, when submitting the Form I-212, provided a copy of the Notice to Applicant for Admission in Detained/Deferred for Hearing Before an Immigration Judge (Form I-122), which lists the reasons for his removal. The applicant also states that during his stay in the United States he became the father of five children who are all U.S. citizens. He states that they need their father. He states that the worst penalty for his crime has been to live separately from them and it is as if he has been killed spiritually.

Letters of supports from the applicant's four children state that the separation has caused them great hardship, financially, socially, and as a complete family. They state that their family is missing a father figure. They state that it has been too long since they have lived without their father and that they want their father to be in the United States to provide them with a good life. They state that they suffer by missing their most loved father. They state that life without their father has also been hard for their mother because she has had to be both parents to them and it is not an easy job. They state that they want their father back in their lives. They state that they want their father by their side to make up for lost time. They state that they don't see him as a father but as a best friend with whom they could do a lot of things. The applicant's second oldest son states that he is about to get married and start his own family. He states that it would mean a lot to him if his father could be in the United States for that. The applicant's oldest son states that even though he is no longer a child, his younger brothers need their father in their lives and that they all need him financially. He states that it is very hard to go to school full time and have a full time job. The oldest son also states that he must pay college loans and that if his father were in the United States he would not have to pay for it all by himself. He states that living in New York is very expensive. He states that his father's opinion and support is necessary to preserve the family unit. He states that the valuable contribution that his father makes to their lives cannot and should not be ignored. He states that his father deserves a special place in their hearts and deep respect and true appreciation for shaping their lives, keeping them grounded and centered, and also by adding another dimension to their lives, even if he is far away.

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 four U.S. citizen sons, the general hardship to the applicant and his family members if the applicant is denied permission to reapply for admission, and the approved immigrant visa petition benefiting him. The AAO notes that the birth of two of the applicant's U.S. citizen sons and the filing of the immigrant visa petition occurred after the applicant was placed into immigration proceedings, 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's removal order from the United States as a lawful permanent resident who has been convicted of a crime of moral turpitude within five years after entry and sentenced to confinement in a prison or corrective institution for a year or more; his conviction for possession of unauthorized telephone access devices; his inadmissibility pursuant to section 212(a)(2)(A)(i)(I) of the Act; his failure to comply with a removal order; his filing of two applications for Form I-551 replacement cards after having been ordered removed; his use of a Form I-551 card after having been ordered removed from the United States; his illegal reentry; his unauthorized presence in the United States; and his 1996 attempt to reenter the United States without first receiving permission to reapply for admission.

The applicant in the instant case has multiple immigration violations and a criminal conviction. 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 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.