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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK, NY

Date:

OCT 15 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.

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

Robert P. Wiemann, 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 Guyana who, on February 20, 1998, appeared at the John F. Kennedy International Airport. The applicant presented a Trinidad and Tobago passport containing a U.S. nonimmigrant visa bearing the name '██████████.' The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to obtain admission to the United States by fraud and being an immigrant without valid documents. On February 21, 1998, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). On February 19, 2001, the applicant's then lawful permanent resident spouse, ██████████, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On February 26, 2002, Ms. ██████████ became a naturalized U.S. citizen. On April 7, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the Form I-130. On July 9, 2003, the Form I-130 was approved. On March 2, 2005, the applicant appeared at the New York District Office. The applicant testified that he had reentered the United States without a lawful admission or parole and without permission to reapply for admission in May 2000. On March 22, 2005, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 reside in the United States with his U.S. citizen spouse and parents.

The district director determined that the applicant did not warrant a favorable exercise of discretion. *See District Director's Decision* dated August 24, 2007.

On appeal, counsel contends that the evidence on appeal establishes that the applicant has equities in the United States that the district director did not consider at the time of her decision. *See Counsel's Preliminary Statement*, dated November 23, 2007. In support of his contentions, counsel submits the referenced brief, affidavits from the applicant and his spouse, immigration documents, an identification card for Ms. Bhairo and medical insurance documentation. 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 native of Guyana who became a lawful permanent resident in 1996 and a naturalized U.S. citizen in 2002. The applicant and [REDACTED] do not appear to have any children together. The applicant's mother, [REDACTED], is a native of Guyana who became a lawful permanent resident in 1992 and a naturalized U.S. citizen in 2000. The applicant's father, [REDACTED], is a native of Guyana who became a lawful permanent resident in 1992 and a naturalized U.S. citizen in 2002. While [REDACTED] states that her mother resides in Canada and the record contains Canadian immigration documents for [REDACTED]), the record does not contain a birth record establishing that [REDACTED] is the daughter of [REDACTED]. While the applicant states that his two sisters reside and have legal status in the United States, there is no evidence in the record to establish that the individuals listed by the applicant are his siblings. The applicant is in his 50's, [REDACTED] is in her 40's, Mr. [REDACTED] is in his 80's and [REDACTED] is in her 70's.

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

On appeal, counsel asserts that [REDACTED] has no relatives in the United States. Counsel asserts that Ms. [REDACTED]s mother and two sisters reside in Canada, and that she visits them regularly. He asserts that, if she has to relocate to Guyana with the applicant, it is likely that she would not see her mother again. Counsel asserts that the applicant has regular employment with a good salary, and medical and dental coverage for both herself and the applicant. Counsel asserts that [REDACTED] would be unable to find adequate employment in Guyana and will lose her benefits. Counsel asserts that the applicant's spouse suffers from substantial health problems. He asserts that [REDACTED] has had hyperthyroidism for several years and is prescribed Synthroid on a daily basis. He asserts that [REDACTED] underwent a hysterectomy six years ago and is required to see an obstetrician-gynecologist and be given a pelvic sonogram every six months. He asserts that [REDACTED] has poor circulation and severe varicose veins for which she wears prescribed pantyhose to alleviate the pain. Counsel asserts that treatment for the applicant's conditions is easily available and inexpensive in the United States, while such treatments will likely be unavailable or prohibitively expensive in Guyana.

On appeal, counsel asserts that the applicant has numerous family ties in the United States. He asserts that the applicant's mother and father have resided in the United States for many years and the applicant's father has a heart condition, which required the implantation of a stent. He asserts that all of the applicant's family members live close to one another and no immediate family members remain in Guyana. Counsel asserts that the applicant does not have a criminal record.

On appeal, counsel acknowledges that inadmissibility under section 212(a)(6)(C)(i) of the Act is a serious matter, he asserts that the applicant will be able to obtain a waiver under section 212(i) of the Act. Counsel asserts that, because the applicant's ground of inadmissibility may be waived, the violation should not be accorded great weight in the exercise of discretion. Counsel also asserts that the applicant's entry without inspection and unlawful presence should not be weighed as negative factors since the applicant is eligible to adjust under section 245(i) of the Act. Counsel fails to cite to any precedent decisions in support of his contention that the applicant's violations should be given less weight because they may be waived or fall under section 245(i) of the Act. As a result, counsel's assertions are unpersuasive.

The applicant, in his affidavits, states that he has known his wife since they met in 1996 and that she returned to the United States shortly after their marriage in 1996. He states that he has been living with his wife since he entered the United States in May 2000. He states that, if he is denied permission to reapply for admission his wife would relocate to Guyana with him in order to keep their marriage intact. He states that his wife has several health problems, which are well-treated in the United States, but would not be treated well in Guyana. He states that his wife has a good job in the United States with no likelihood of reasonable employment in Guyana. He states that his wife's mother and one sister reside in Canada and she may not be able to see her mother again if she relocates to Guyana. He states that all of his immediate family members live in the United States. He states that his mother has resided in the United States since 1990. He states that both of his parents are in poor health and that his father suffers from a heart condition that required implantation of a stent. He states that he has no relatives and no job to which he could return to in Guyana. He states that the United States is a safe haven and Guyana has dangerous and oppressive conditions. He states that he and his wife support each other financially and spiritually, and to be separated would bring devastation to his life. He states that his parents look to him for support and guidance as he is their only son and he caters to their every need. He states that, after the painful loss of one of their sisters, his family has grown closer and his siblings depend upon him as their older brother. He states that he has never been convicted of a crime and has no intention of committing a crime in the future.

in her affidavits, states that her mother and two sisters reside in Canada. She states that her mother is a widow who suffers from arthritis and she fears that she will be unable to see her mother if she relocates to Guyana with the applicant. states that she will be unable to afford the trip to Canada and both she and her mother will be unable to travel due to their health problems. She states that she would lose her steady employment and benefits if she relocated to Guyana. She states that she has hyperthyroidism and is prescribed Synthroid, which she takes daily. She states that interruption of her medication could endanger her life. She states that she had a hysterectomy and has to be seen by an obstetrician-gynecologist every six months for a pelvic sonogram. She states that her medication and these procedures may not be available in Guyana or may be prohibitively expensive. She states that, prior to her marriage to her husband, she did not want to live and her life was shattered after she was raped. She states that she was very lonely, frustrated and emotionally and psychologically disturbed. She states that she pushed the applicant to join her in the United States as quickly as possible and when he was removed from the United States she was hospitalized for two weeks with depression, the result of her anxiety and emotional shock. She states that she depends on the applicant financially, emotionally and religiously. She states that she is nothing without the applicant and he is her rock and support. 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)).

[REDACTED] in her letter, states that after her eldest daughter died the bond between her and her remaining children deepened. She states that the applicant is especially important to her as her only son. She states that the applicant is always there for her and her husband in times of need. She states that she looks to the applicant for support over her daughters in the United States. She states that the applicant's removal to Guyana would be stressful to both her and her husband because they depend on him so much.

Tax records reflect that the applicant and his wife have joint income tax returns from 2003 through 2005. However, the same tax records and the applicant's Biographical Information sheet (Form G-325) indicate that the applicant has not been employed since he entered 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. *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 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 naturalized U.S. citizen spouse, his naturalized U.S. citizen parents, the general hardship to his family members and the approved immigrant visa petition for alien relative. The AAO notes that the filing of the immigrant visa petition benefiting the applicant occurred after the applicant was placed into immigration proceedings, and is, therefore, an “after-acquired equity,” which the AAO accords diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant’s the applicant’s inadmissibility under section 212(a)(6)(C)(i) of the Act for his attempt to enter the United States by fraud in 1998; the applicant’s inadmissibility pursuant to section 212(a)(9)(C)(i) of the Act for his illegal reentry after having been removed from the United States; and his unlawful presence in the United States prior to filing for adjustment of status.

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.

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.