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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H4

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 11 2008**

IN RE:

Applicant:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, and the matter is now before the Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Iran who entered the United States on December 7, 1994 as a B-2 nonimmigrant visitor. Encountered by immigration officers on December 11, 1994 after having been refused entry to Canada, the applicant indicated that he was scheduled for a December 22, 1994 asylum interview in that country. He was granted voluntary departure until January 1, 1995 and, prior to the expiration of his grant of voluntary departure, entered Canada and applied for asylum. He returned to the United States following the denial of his Canadian asylum claim, entering without inspection, and was placed into immigration proceedings on June 1, 1998. The applicant applied for asylum and withholding of removal before the immigration judge. On September 19, 2001, the immigration judge denied the applicant's applications for asylum and withholding, ordering the applicant removed to Iran. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA), which remanded the case to the immigration judge. The immigration judge returned the case to the BIA on September 30, 2002. On August 22, 2003, the BIA affirmed the immigration judge's decision without opinion and the applicant filed a petition for review with the Ninth Circuit Court of Appeals. On August 31, 2005, the Ninth Circuit denied the applicant's petition, finding he had not established eligibility for asylum. On January 19, 2006, the applicant's spouse filed a Form I-130, Petition for Alien Relative, on the applicant's behalf, which was approved on July 5, 2006. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien who has been ordered removed from the United States. 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 with his U.S. citizen spouse.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *Director's Decision*, dated August 3, 2006.

On appeal, the applicant notes that he is living peacefully and happily with his spouse and her children. He contends that if he is removed from the United States, it will be morally devastating to him and his family because of the loss of companionship, care, love and affection. See *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated August 21, 2006. In support of the appeal, the applicant submits a declaration from his spouse, [REDACTED], dated August 25, 2006. 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 an 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 AAO now turns to a consideration of positive and adverse factors in the present case.

On the Form I-212, the applicant indicates that his reason for desiring to remain in the United States is his U.S. citizen spouse who is diabetic. The record, however, offers no further evidence that the applicant's wife suffers from diabetes and, by itself, the notation on the Form I-212 is insufficient proof of her medical condition. 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)).

On appeal, the applicant submits a declaration from his spouse in which she states that he is a caring and loving husband and father. If the applicant is removed from the United States, she contends, it will cause irreparable damage, resulting in the loss of companionship, care, affection and the fracture of their peaceful and happy marriage.

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 U.S. citizen spouse, the general hardship she will experience if he is removed from the United States and the approved Form I-130 benefiting him. Although the record does not contain evidence that establishes the specific date on which the applicant married his current spouse, the AAO notes that the documentation in the record is sufficient to demonstrate that the applicant's marriage to his current spouse took place after he was placed into proceedings. A Form I-862, Notice to Appear, indicates that the applicant was placed into proceedings on June 1, 1998 and a Form I-213, Record of Deportable/Inadmissible Alien, also dated June 1, 1998, reports the applicant as divorced. As the applicant's marriage and, therefore, his spouse's filing of the Form I-130 occurred after he was placed into immigration proceedings, they are considered "after-acquired equities," and are accorded diminished weight in this proceeding.

The AAO finds the record to establish the following unfavorable factors in this case: the applicant's 1998 entry without inspection to the United States, his failure to comply with the immigration judge's order of removal once the appeal process was exhausted on August 31, 2005 and his unlawful residence in the United States since that date.

The applicant in the instant case has multiple immigration violations and the totality of the evidence demonstrates that the favorable factors in the present matter are outweighed by the unfavorable factors. The applicant has, therefore, failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

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. In the present matter, the applicant has not met that burden.

ORDER: The appeal is dismissed.