U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

H4

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 17 [illegible]

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.

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 Ecuador who, on September 1, 1994, entered the United States without inspection. On June 11, 1997, during an inspection of the applicant's employer's facilities in New Jersey, the Immigration and Naturalization Service detained the applicant after he was found to be in possession of a fraudulent I-555 Resident Alien Card and social security card. The applicant refused to cooperate in locating the individual(s) from whom he had obtained the fraudulent documents. The applicant was placed in proceedings and released on bond. On October 15, 1997, the immigration judge granted the applicant voluntary departure until February 15, 1998. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On June 2, 2000, a warrant of removal was issued, ordering the applicant to present himself for removal on July 7, 2000. The applicant failed to present himself for deportation or to depart the United States. On March 29, 2001, the applicant married his U.S. citizen spouse. On March 20, 2002, the Petition for Alien Relative (Form I-130) the applicant's U.S. citizen wife filed on his behalf was approved. On September 2, 2004, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He is the beneficiary of an approved immigrant petition filed on his behalf. 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 remain in the United States and reside with his U.S. citizen spouse.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director denied the Form I-212 accordingly. *See Director's Decision* dated January 25, 2005.

On appeal, the applicant contends that the director utilized negative factors that should not have been utilized in the weighing of negative and positive factors. *See Applicant's Affidavit,* dated February 12, 2005.

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 entered the United States without inspection and, when granted voluntary departure, failed to voluntarily depart the United States. The voluntary departure became a final order of removal with which the applicant failed to comply. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act and, therefore, must receive permission to reapply for admission.

On appeal, the applicant submits a copy of his father's death certificate with translation and an affidavit explaining the reasons why certain negative factors listed in the director's decision should be excused.

The applicant contends that he only entered the United States in order to provide support to his family members because his father had died seven months prior. However, the death certificate indicates that the applicant's father died three years after his illegal entry into the United States. The applicant contends that he did not know the I-555 Resident Alien Card and social security card were fraudulent and that he was told he could work lawfully in the United States. However, the Record of Sworn Statement (Form I-215C) indicates that the applicant knew that he had purchased false documents. The applicant contends that the reason he did not cooperate in locating the individual(s) from whom he had purchased these documents was because the immigration officer was not fluent in Spanish. However, at the end of the Form I-215C the applicant signed his name to a statement written in Spanish in which he swore that everything contained in the Form I-215C was correct and true. The applicant contends that the reason he did not initially leave the United States was because he was under pressure to provide financially for his family in Ecuador. Finally, the applicant contends the reason he did not depart the United States when the warrant of deportation was issued was because he had changed addresses and the person with whom he used to reside did not inform him that a warrant had issued for his deportation. The applicant provides no explanation as to why he failed to inform the government of his change in address. The applicant's explanations as to why he originally entered the United States, that he was unaware of his illegal status and why he failed to depart the United States are not excuses for his actions.

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-Nunoz 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 that the above-cited precedent legal decisions establish the general principle that "after-acquired equities" are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

The favorable factors in this matter are the applicant's U.S. citizen spouse and an approved immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States, extended unauthorized residence and employment in the United States, possession of fraudulent immigration documents, use of fraudulent immigration documents to obtain employment in the Untied States, failure to depart the United States under an order of voluntary departure, and non-compliance with a 2000 warrant of deportation.

The applicant in the instant case not only has multiple immigration violations, but through his attempts to explain his violations of and failure to comply with U.S. immigration laws, which are clearly inconsistent with evidence contained within the record, has not shown reformation. Moreover, the AAO finds that the applicant's marriage and approved immigrant petition occurred after a warrant of deportation was issued against the applicant in 2000. The AAO finds that these factors are "after-acquired equities" and that any favorable weight derived from the applicant's marriage and immigrant petition is accorded diminished weight. The totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the

laws of the United States, and 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 that 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.