identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H4

[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: APR 16 2010

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: 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 Ecuador who, on October 21, 1987, was placed into immigration proceedings for having entered the United States without inspection on December 10, 1984. On March 14, 1988, the immigration judge ordered the applicant removed from the United States *in absentia*. On October 23, 1989, the applicant was removed from the United States and returned to Ecuador.

On October 24, 1996, the applicant's U.S. citizen brother filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on November 15, 1996. On January 7, 2008, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. The Form I-485 indicates that the applicant last entered the United States without inspection on October 4, 1995. On July 22, 2008, the Form I-485 was denied. On July 31, 2009, the applicant filed the Form I-212, indicating that he continued to reside in the United States. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 naturalized U.S. citizen brother and lawful permanent resident mother.

The district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision,* dated August 20, 2009.

On appeal, the applicant contends that, on March 14, 1988, he completed the order of the immigration judge.[1] The applicant states that he returned to the United States in May 1995.[2] He states that he was married in Ecuador in 1991 and has legally recognized his daughter. The applicant states that he has an approved Form I-130 filed on his behalf by his brother. *See Form I-290B,* dated September 12, 2009. In support of these contentions, the applicant submits the referenced Form I-290B, copies of marriage and birth records and a copy of the approval notice for the Form I-130. 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

[1] The AAO notes that, while the immigration judge's order was issued on March 14, 1988, the applicant did not comply with the order and was not removed from the United States until October 23, 1989.

[2] The AAO notes that the Form I-485 indicates and testimony submitted by the applicant's family and friends in affidavits indicate that he did not return to the United States until October 4, 1995.

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 of 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 record reflects that, on March 15, 1991, the applicant married [redacted] in Ecuador. The record does not reflect that [redacted] has any legal status in the United States. The applicant has a thirty-year old daughter who is a native and citizen of Ecuador. The record does not reflect that the applicant's daughter has any legal status in the United States. The record reflects that the applicant's brother is a native of Ecuador who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1995. The applicant's mother is a native and citizen of Ecuador who became a lawful permanent resident in 1996. The applicant is in his 50's.

The applicant's brother, in an affidavit attached to the Form I-212, states that the applicant is a respectable and honest person. He states that the applicant's mother suffers from diabetes. He states that the applicant's mother's husband died in 2008. He states that the applicant's mother needs to stay with the applicant.

The applicant's mother, in an affidavit attached to the Form I-212, states that the applicant is a responsible and honest person. She states that she is receiving medical treatment for critical diabetes. She states that her husband died in 2008. She states that she is suffering for her son and that she wants to stay with him.

The applicant's friends, in affidavits attached to the Form I-212, state that the applicant is a person with good conduct and a good character. They state that the applicant is a hard worker, an excellent person and is very reliable.

The AAO notes that there is no evidence in the record to establish that the applicant's mother has been diagnosed with or is being treated for diabetes. There is no evidence to establish that the

applicant's mother would be unable to receive appropriate treatment in the applicant's absence or if she accompanied him to Ecuador. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The record reflects that the applicant has been employed in the United States without employment authorization.

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 a discretionary determination. 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 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.

As established by the record, the favorable factors in this matter are the applicant's naturalized U.S. citizen brother, his lawful permanent resident mother, the general hardship to the applicant and his family if he were denied admission to the United States and the approved immigrant visa petition filed on his behalf. The AAO notes that the applicant's brother's and mother's adjustments of status to that of lawful permanent residents, the applicant's brother's naturalization and the filing of the immigrant visa petition benefiting the applicant occurred after the applicant was placed into immigration proceedings. They are, therefore, "after-acquired equities," to which the AAO accords diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original unlawful entry into the United States; his failure to appear at an immigration hearing; his failure to comply with a removal order; his illegal reentry into the United States after having been removed; his unlawful presence in the United States; and his unauthorized employment 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.

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.