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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

[redacted]

#4

FILE: [redacted] Office: NEW YORK, NY Date: AUG 0 3 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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 record reflects that the applicant is a native and citizen of Jamaica who, on July 12, 1994, was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past her authorized stay, which expired on January 11, 1995. On January 24, 1995, the district director granted the applicant voluntary departure until February 23, 1995. The applicant was provided with warnings that if she failed to depart the United States she would be required to apply for permission to reapply for admission and be ineligible to adjust status. 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 October 1, 1996, the applicant's naturalized U.S. citizen brother filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on January 14, 1997. On July 17, 2009, the applicant filed the Form I-212, indicating that she 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). The applicant seeks a waiver 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 her naturalized U.S. citizen spouse and lawful permanent resident brother.

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 September 23, 2009.

On appeal, counsel contends that the applicant did not have knowledge of the implications of her failure to depart, she had no one to rely on if she returned to Jamaica, she has otherwise been a law abiding citizen who has tried to improve herself and her U.S. citizen spouse will suffer hardship if she is not permitted to adjust her status. *See Form I-290B*, dated October 21, 2009. In support of his contentions, counsel submits the referenced Form I-290B, statements from the applicant and her spouse, educational documentation and letters of recommendation. 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 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.

On appeal, counsel contends that the applicant did not have knowledge of the implications of her failure to depart and she had no one to rely on if she returned to Jamaica. The record does not contain evidence to establish that the applicant's parents have passed away. Additionally, the record establishes that the applicant was given appropriate oral and written warnings and knowledge of the consequences of failure to depart the United States. Counsel contends that the applicant has otherwise been a law abiding citizen. The record does not contain any documentation, such as clearance letters, to establish that the applicant has otherwise been law abiding. Going on record without supporting documentary evidence 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record reflects that the applicant married her spouse, [redacted] on [redacted].[1] [redacted] is a native of Jamaica who became a lawful permanent resident in 1982 and a naturalized U.S. citizen in 1990. The applicant and [redacted] do not appear to have any children together. The applicant's brother is a native and citizen of Jamaica who became a conditional resident in 1988 and a lawful permanent resident in 1990. The applicant is in her 30's, her brother is in his 50's and [redacted] is in his 40's.

In a statement on appeal, the applicant states that she resided with her father until he passed away in 1994. She states that her mother was unable to cope after the death of her father and she came to reside with her sister in the United States. She states that she thought she could stay in the United

[1] The record reflects that [redacted] has been married on at least one other occasion and the record does not contain a divorce or death record to establish the legal termination of that marriage; however, for the purposes of adjudicating the applicant's Form I-212 the AAO will view [redacted] as a favorable factor and equity.

States and her sister told her she could go to school and work. She states that she was shy and naïve and believed everything her older sister told her. She states that she went to live with her brother after her relationship with her sister became strained. She states that she signed the papers to be released from immigration detention and did not know what they said. She states that her brother immediately began to file immigration papers for her after she was released. She states that she is still waiting for the process to be completed. She states that her brother has since lost his house and moved in with the mother of his children, while she moved to New York to find work. She states that, although she has siblings in the United States she has found them to be unloving, uncaring, selfish and manipulative. She states that she finally found friendship, family and love in the embrace of strangers. She states that these strangers are now her family. She states that she resided with one of these people, [redacted], for nine years and she took the place of her mother who has now passed away. She states that [redacted] taught her to cook and counseled her as to what was right, reprimanding her when she was wrong and encouraging her to strive for the best. She states that [redacted] children embrace her as part of the family and she still has a key to the house. She states that [redacted] accepts her husband as a son. She states that, despite all the hardships, she has learned to soar above them with the help of God and countless others. She states that, in 2006, she took the general equivalency diploma exam. She states that she also took the placement test at [redacted]. She states that she graduated from [redacted] with honors in 2009 and currently attends [redacted] while she completes her bachelor's degree in accounting, continuing toward an MBA and eventually a certified accountant. She states that she has grown to love and appreciate, learning the importance of volunteering her time by mentoring and tutoring. She states that she is a volunteer teacher and has learned through the Ulster County Multiservice Center to better understand and communicate with children. She states that she is a volunteer cleaner at the Pointe of Praise Family Life Center. She states that she has learned that the most menial jobs are important and that, without this help, the environment would be uninviting and the morale of the entire organization would be affected. She states that she has learned to work harmoniously and efficiently as a member of the Pointe's financial team. She states that, given the opportunity to remain in the United States, she will extend her hands to help others by giving of herself, time, knowledge and resources. She states that she obeys the laws of the United States.

In a statement on appeal, [redacted] states that he met his wife fifteen years ago when the applicant resided with her sister in New York. He states that he was disappointed when he learned that the applicant had gone to reside with her brother in Florida. He states that he met the applicant again in summer 2007 and he married her in December 2007. He states that he has been married to the applicant for two years and he loves her more deeply than he did before. He states that his wife is his friend and companion and a major driving force in his life. He states that his heart aches at the thought of not having the applicant by his side daily. He states that he feels helpless and depressed as his world seems to be falling apart.

A letter from Maurice D. Hinchey, Congressman, dated October 21, 2009, states that [redacted] has requested his assistance in regard to the applicant. He states that, apparently, [redacted] has been married to the applicant for two years and greatly relies on the applicant for emotional support. He states that it is his understanding that the applicant and [redacted] will suffer tremendous emotional hardship if the applicant is removed from the United States.

Documentation in the record establishes that the applicant is currently enrolled and in good standing at [redacted] The record reflects that, in 2009, the applicant was awarded

an Associate's degree with honors in Business Administration and was awarded an achievement award by [redacted] in 2008.

Recommendation letters from friends states that the applicant is civil, ethical, honest, helpful, likeable, driven, conscientious, dependable, helpful, kindhearted and of good moral character. They state that they have seen the applicant go the extra mile to help others. They state that the applicant is the type of person needed in the United States. They state that the applicant exhibits genuine concern and possesses overwhelming compassion for others. They state that the applicant found a loving family of friends at the local community church where she quickly used the newfound stability to better herself. They state that the applicant did not allow her immigration status to get the best of her and discovered the importance of an education. They state that the applicant is goal oriented, focused and does not permit distractions to get her off course. They state that the applicant is a truly deserving individual and is a role model to others within her community.

A letter from Superintendent [redacted] Pointe of Praise Family Life Center, dated October 13, 2009, indicates that the applicant has attended the church for the past eleven years. He states that the applicant is honest, trustworthy, reliable, self sufficient and law abiding. He states that the applicant volunteers at the church where she serves on the finance committee. He states that the applicant is responsible for counting weekly income, preparing deposits and keeping financial records. He states that the applicant trains others in the use of computer financial programs. He states that the applicant has served as a volunteer in the youth program and volunteers to clean the church building.

A letter from [redacted] Praise Dominion Family Worship Center, dated October 13, 2009, indicates that he admires the applicant's optimism and selfless character. He states that the applicant has remained an active member of the church. He states that the applicant is intelligent, creative and self-motivated. He states that the applicant has exhibited a strong faith and has extended herself to assist many in the community, including him and his wife. He states that the applicant was very creative and energetic in working with the children in special programs at the church.

Documentation in the record establishes that the applicant has been employed in the United States. The record reflects that the applicant has never been issued 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 lawful permanent resident brother, her naturalized U.S. citizen spouse, the general hardship to the applicant and her family if she were denied admission to the United States and the immigrant visa petition filed on her behalf. The AAO notes that the applicant's marriage and the filing of the immigrant petition benefiting her 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 overstay of her nonimmigrant status; her failure to comply with voluntary departure; her failure to comply with a removal order; her unauthorized and unlawful presence in the United States; and her 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 that she 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.