(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Date: MAY 0 6 2013 Office: LOS ANGELES, CA FILE:

IN RE:

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application will remain denied.

The record reflects that the applicant is a native and citizen of Bangladesh who entered the United States as a lawful permanent resident on April 6, 1998. After having been convicted of two crimes involving moral turpitude not arising under a single scheme of criminal misconduct, the applicant was removed from the United States on April 21, 2003 pursuant to section 237(a)(2)(A)(ii) of the Act. As a result of his removal the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (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 U.S citizen father.

In a decision, dated September 12, 2011, the field office director found that the record failed to reflect any significant factors which could be considered in the applicant's favor and thus, the underlying reason for the removal could not be overcome. She denied the Form I-212 accordingly.

On appeal, counsel stated that the applicant and his elderly father would suffer hardship if he was not granted permission to reapply for admission. Counsel also stated that the applicant's last conviction occurred over eight years ago and that the applicant had plans to join the Army before his father became sick.

In our decision, dated July 25, 2012, we found that the unfavorable factors in the applicant's case outweighed the favorable factors. We noted that the applicant may be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.

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.
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> > (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 the applicant was removed on April 21, 2003. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

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.

On appeal, the record included counsel's brief, a statement from the applicant's father, and medical records for the applicant's father. On appeal we found that the favorable factors in the applicant's case included his family ties to the United States, the possible hardship he and his father would suffer if he was not granted permission to reapply for admission, the fact that he has not had a criminal record since 2003, and that he was 19 and 22 years old when he committed the acts leading to his convictions. We found the unfavorable factors included the applicant's criminal record and that the applicant had only resided in the United States for two years when he started committing criminal acts.

Moreover, we found that the record lacked details or documentation regarding the applicant's moral character and if he had been rehabilitated, the extent of the care the applicant's father required, and whether there were other family members in the United States that could help care for the applicant's father in his absence.

On motion, counsel submits new evidence in the form of medical documentation for the applicant's lawful permanent resident mother. Counsel states that the applicant's mother and father are very sick and require the applicant in the United States to take care of them, that there is no other family member able to care for the applicant's father, that the applicant has not committed a crime since 2003, and the applicant never worked illegally in the United States.

Without documentary evidence to support the claims made, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported 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). Furthermore, the assertions of the applicant's father are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan,* 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained in an affidavit should not be disregarded simply because it appears to be hearsay. In administrative proceedings, that fact merely affects the weight to be afforded [it] . . . ."). Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The only supporting documents in the record are medical records for the applicant's father and mother. The medical records for the applicant's mother show that she is 56 years old and suffers from diabetes, hypertension, hyperlipidemia, asthma, reflux disease, chest pain, and possibly a stroke with weakness in her left side. The record does not show how these medical problems affect her daily functioning nor does it demonstrate how she is suffering without the help of the applicant in the United States. The medical records for the applicant's father indicate that he suffers from prostate and bladder problems, is a diabetic, and has arthritis. Again, the record does not show how these medical problems affect the applicant's father's daily functioning nor does it demonstrate how he is suffering without the help of the applicant in the United States. We also note that the applicant's father claims in his statement that he is living alone, which is inconsistent with the current record concerning his wife's lawful permanent residence. We acknowledge that factors in the applicant's favor are his family ties to the United States, but the record does not establish that his parents are suffering hardships as a result of his absence, which could be considered an additional favorable factor. We also acknowledge that it has been 10 years since the applicant was convicted of a crime, but other than the passage of time, nothing in the record indicates that the applicant has been rehabilitated and would not return to criminal activities upon being admitted to the United States.

Thus, the favorable factors that have been established by the record include the applicant's family ties to the United States, his lack of a criminal record since 2003, and his lack of immigration violations. The unfavorable factors in his case include his convictions for two crimes, grand theft and receiving stolen property, the first of which was committed less than two years after entering the United States. Therefore, we find that the unfavorable factors in the applicant's case outweigh the favorable factors such that a favorable exercise of discretion is not warranted.

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. Thus, the underlying application will remain denied.

ORDER: The underlying motion remains denied.