



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

Office: VERMONT SERVICE CENTER

Date: JUN 07 2006

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, in January 1991, entered the United States without inspection. On April 16, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by his first spouse, [REDACTED]. The applicant submitted an altered U.S. Birth Certificate with the Form I-485 and Form I-130. On January 12, 2000, the Form I-485 was denied because the Form I-130 was denied for fraud and failure to provide an unaltered U.S. Birth Certificate for the applicant's spouse. On June 2, 2000, the applicant's motion to reopen the Form I-485 was denied and he was placed in proceedings before an immigration judge. On March 2, 2001, the immigration judge granted the applicant voluntary departure until May 1, 2001. The applicant failed to depart the United States and filed an appeal with the Board of Immigration Appeals on April 19, 2001. On April 16, 2002, the applicant divorced Ms. [REDACTED]. On May 10, 2002, the Board of Immigration Appeals affirmed the immigration judge's order, granting the applicant voluntary departure until June 10, 2002, with an alternate order of removal to Ecuador. The applicant failed to depart the United States and an order of removal was issued on June 27, 2002. On June 27, 2002 a warrant of removal was issued. The applicant failed to present himself for deportation or to depart the United States. On August 6, 2002, the applicant was informed that he should surrender himself for removal on October 17, 2002. Again, the applicant failed to present himself for deportation or to depart the United States. On October 14, 2003, the applicant married his current spouse, [REDACTED] ([REDACTED] a U.S. citizen by birth. On November 4, 2003, the applicant's U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on his behalf. On December 17, 2003, the applicant's U.S. citizen son was born. On June 17, 2004, the Form I-130 was approved. On July 20, 2004, the applicant filed the Form I-212. The applicant was ordered removed from the United States and is therefore 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). The applicant 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 and child.

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 March 9, 2005.

On appeal, counsel contends that the director incorrectly gave little or no weight to the applicant's positive factors and misconstrued the applicant's negative factors. *Form I-290B*, dated April 11, 2005. In support of his contentions, counsel submits the above-referenced Form I-290B, an affidavit from the applicant and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(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 . . .

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 Attorney General [now Secretary, Homeland Security, "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. The AAO notes that all of the applicant's appeals have been dismissed. 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.

The applicant, in his affidavit, contends that the director erred in finding he had shown a "callous attitude" towards immigration laws and argues that this finding is the equivalent of finding that he is a person lacking good moral character. The applicant contends that the director could not find him a person lacking good moral character because in *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978) the Regional Commissioner held that immigration violations, standing alone, do not conclusively support a finding of a lack of good moral character. The applicant's argument is unpersuasive since the director did not find the applicant to be a person lacking good moral character. The director found that, as dictated by *Matter of Lee*, the applicant's callous attitude toward violating immigration laws is a heavily weighted negative factor. The applicant also contends that the director's finding that he had shown a "callous attitude" towards immigration violations was unwarranted because his lack of authorized stay and work authorization does not constitute a "callous attitude." The AAO finds that the applicant entered the United States without inspection, remained and worked in the United States without authorization, failed to comply with voluntary departure, failed to comply with an order of deportation and continued to remain in and work without authorization in the United States. As such, the applicant has shown a callous attitude towards immigration violations.

The applicant, in his affidavit, contends that he would suffer extreme hardship if he left his family in the United States while returning to Ecuador. The applicant also contends that life in Ecuador is tough and the economy is depressed, making it impossible for him to support his family there. He states that his spouse would be forced to find work in Ecuador and would not have time for their child. The record contains no evidence that the applicant's spouse would be unable to support herself and their child if she were to remain in the United States without the applicant. The record contains no evidence that Ms. Celi or their child suffer from a mental or physical illness.

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 unlawfully. *Id.*

*Matter of Lee* further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Supra* 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 deported and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Supra*.

The 7<sup>th</sup> Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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 marriage to a U.S. citizen, birth of a U.S. citizen son, payment of federal taxes, no criminal history 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, non-compliance with an order of voluntary departure, non-compliance with an order of deportation and accumulated unlawful presence in the United States.

The applicant in the instant case has multiple immigration violations. Moreover, the AAO finds that the birth of the applicant's son, the applicant's marriage and the immigrant petition occurred after a deportation order was issued against the applicant in 2002. The AAO finds that these factors are "after-acquired equities" and

that any favorable weight derived from the applicant's marriage or son 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.