**U.S. Department of Homeland Security**
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U.S. Citizenship and Immigration Services

**PUBLIC COPY**

[redacted]

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FILE: [redacted] Office: NEWARK, NEW JERSEY Date: **MAR 19 2007**

IN RE: Applicant: [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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, Newark New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a British subject born in Saint Kitts, British West Indies, who was admitted into the United States on January 20, 1974, as a visa exempt temporary worker authorized to remain in the U.S. Virgin Islands until September 20, 1974. On June 15, 1974, the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant after he attempted to board a flight from San Juan, Puerto Rico, to New York City. The applicant presented himself as a citizen of the United States and presented a valid Virgin Island Identification Card that did not belong to him. On the same date, an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was issued. Consequently, an immigration judge ordered the applicant deported from the United States pursuant to section 241(a)(9) of the Immigration and Nationality Act (the Act), as an alien who after admission as a nonimmigrant failed to comply with the conditions of such status. On June 15, 1974, a Warrant of Deportation (Form I-205) was issued and on July 22, 1974, the applicant was deported from the United States. The record reflects that the applicant reentered the United States on or about September 15, 1974, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) filed by his U.S. citizen sibling. The applicant is inadmissible to the United States under 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 remain in the United States and reside with his U.S. citizen mother, children and siblings.

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *See District Director's Decision* dated February 17, 2006.

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

> (A) Certain aliens previously removed.-
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> . . .
>
> (ii) Other aliens. - Any alien not described in clause (i) who-
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> > (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 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 aliens 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.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, counsel submits a brief in which he states that the District Director improperly interpreted the evidence presented and misapplied case and statutory law in reaching her decision. Counsel states that if the applicant is forced to leave the United States, his mother, who is suffering from a pre-cancerous condition, would experience extreme hardship. Counsel refers to *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 3380 (BIA 1999) which provides a list of relevant factors in determining whether an alien has established extreme hardship. In addition, counsel states that the applicant has resided in the United States for over thirty-two years, he has substantial family ties in the United States, and his mother is elderly with a "health condition." Counsel submits a statement from the applicant's mother in which she pleads for the approval of the Form I-212 so the applicant can remain in the United States and continue to provide her with the love and support that only a child can provide an elderly and infirm parent. Counsel states that the applicant's extended family members provided statements on his behalf requesting that the applicant be allowed to remain in this country. In addition, counsel states that in *Garcia–Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), one of the cases cited by the District Director in order to demonstrate that less weight may be give to equities acquired after an order of deportation was issued, the applicant had exhibited flagrant disregard for the immigration laws of the United States by illegally entering four times, and in addition, his spouse had withdrawn her Form I-130. Further, counsel states that in *Carnalla-Nunoz v. INS,* 627 F.2d 1004 (9th Cir. 1980), the after acquired equity was that since the deportation hearing, one of the petitioner's children had obtained lawful permanent residence, which is not as significant as the applicant's family, which is composed primarily of U.S. citizens. Additionally, counsel states that in *Wang v. INS*, 662 F.2d 1341 (9th Cir. 1980) the court held that the facts arising after a deportation order been issued are not to be totally discounted. Counsel further states that the summary dismissal of the thirty-one year residence of the applicant in this country and his extensive and close family ties in the United States was improper. Furthermore, counsel states that the serious illness of the applicant's mother and the extreme hardship she would suffer must be taken into consideration. Finally, counsel states that the favorable factors far outweigh the negative factors and requests that the Form I-212 be granted in order for the applicant to remain in the United States and avoid the extreme hardship that the applicant's mother would experience if he were forced to leave the country.

The AAO notes that counsel states that the applicant's mother suffers from a medical condition but provides no documentary evidence to support his statement. In addition, counsel submits no evidence to show that the applicant's mother would be unable to take care of herself and her daily chores, or why her other children would not be able to attend to her. The applicant's mother has been living in Florida since at least the year

2000, as evidenced by her driver's license. While counsel indicates that the applicant has moved to Florida to assist his mother, the applicant's address on the Form G-28 submitted on appeal lists his address as New Jersey. 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 AAO notes that *Cervantes-Gonzalez, supra,* provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. Unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's family, but it will be just one of the determining factors.

The applicant is seeking relief based on his relationship to his U.S. citizen mother and siblings, a relationship that is not considered after-acquired equity. Therefore, the applicant's relationship to his mother and siblings will be given appropriate weight.

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,* 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 AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his U.S. citizen mother, children, siblings and nephews and nieces, an approved Form I-130, and the prospect of general hardship to his family.

The AAO finds that the unfavorable factors in this case include the applicant's failure to comply with the conditions of his admission, his false representation to being a U.S. citizen, his illegal reentry subsequent to his deportation, his employment without authorization and his lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee, supra,* that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh 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 eligibility 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.