



U.S. Citizenship
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Services

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MAY 18 2007

FILE:

Office: BALTIMORE, MD

Date:

IN RE:

Applicant:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Baltimore, Maryland and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant is a native and citizen of El Salvador who entered the United States without inspection in September 1996. *Form I-821, Application for Temporary Protected Status.* On January 23, 1997 an immigration judge ordered the applicant deported in absentia. *Decision of the immigration judge,* dated January 23, 1997. Arrangements were made for the applicant to depart on May 14, 1997, however, he failed to appear. *Notice from District Director.* The applicant remained in the United States and was granted Temporary Protected Status on January 4, 2002. *Form G-325A, Biographic Information sheet, for the applicant; Temporary Protected Status approval notice,* dated January 4, 2002. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. 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 remain in the United States and reside with his U.S. citizen spouse and their U.S. citizen child.

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *District Director's Decision,* dated February 16, 2006.

On appeal, counsel states that the District Director erred in finding that the applicant does not merit a favorable exercise of discretion. *Form I-290B; Attorney's brief.* In support of his assertion, he submits numerous letters of support from family members and friends.

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, 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 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 court 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-Nunoz 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 considering discretionary weight. 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 applicant in the present matter married his U.S. citizen spouse on May 3, 2002, over five years after he was placed in deportation proceedings. The applicant's spouse should reasonably have been aware at the time of their marriage of the applicant's immigration violations and the possibility of his being removed. He now seeks relief based on that after-acquired equity. Therefore, hardship to his spouse will be accorded appropriate weight.

The applicant and his spouse have one U.S. citizen child who is almost three years old. *Birth Certificate*, issued June 16, 2004. They had another U.S. citizen child born in 2002 who died after seven days. *Death Certificate*, dated July 24, 2004. The applicant supports his U.S. citizen spouse and their U.S. citizen son emotionally and financially. *Statement from the applicant's spouse*, dated March 3, 2006. The applicant's spouse does not earn an income, as she takes care of their son full-time. *Statement from the applicant's spouse*, dated March 3, 2006. As the parents of the applicant's spouse are going through a divorce, the applicant's spouse has become the primary caregiver for her mother, who has suffered from depression for the last six years. *Statement from the applicant's spouse*, dated March 3, 2006. The mother of the applicant's spouse has frequent episodes of severe depression for which she is treated with electroconvulsive therapy three times per week. *Psychological affidavit from [REDACTED] Psy.D.*, dated April 23, 2006. The applicant's spouse accompanies her mother to a psychiatric hospital for each of her treatments, and she is able to do so because of the financial and emotional support of the applicant. *Id.*

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 spouse and children, but it will be just one of the determining factors.

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.*

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his U.S. citizen spouse and U.S. citizen child; an approved Form I-130; the prospect of hardship to his family; numerous letters of support from many family members and friends attesting to the positive character of the applicant; letters of support from the applicant's employer; the consistent payment of taxes by the applicant; and the absence of a criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, and his periods of unauthorized presence and employment.

While the applicant's actions cannot be condoned, the AAO finds that given all the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.