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U.S. Citizenship
and Immigration
Services

H4



FILE:

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Date:

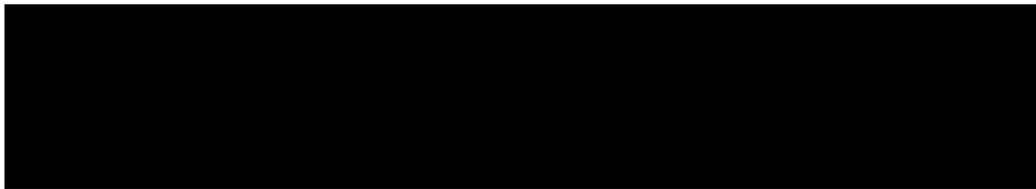
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IN RE:



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:

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 Acting 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 Bolivia who, on June 16, 1990, was admitted to the United States as a visitor for business. The applicant remained past his authorized B-1 nonimmigrant status, which expired on July 10, 1990. On November 19, 1992, the applicant was placed into proceedings. On January 27, 1993, the immigration judge granted the applicant voluntary departure until July 27, 1993. The applicant failed to surrender for removal or depart from the United States, thereby changing the grant of voluntary departure to a final order of removal. On July 30, 1993, a warrant was issued for the applicant's removal. On November 19, 1996, the applicant married his spouse, [REDACTED] a). On April 4, 1997, Ms. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on July 22, 1997. On May 27, 1998, the approved Form I-130 was revoked. On March 1, 1999, Ms. [REDACTED] filed a second Form I-130, which was approved on August 3, 2001. On May 18, 2001, the applicant filed the Form I-212. 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) and 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 return to the United States and reside with his U.S. citizen spouse and children.

The acting director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Acting Director's Decision* dated January 12, 2006.

On appeal, counsel contends that the applicant warrants a favorable exercise of discretion. *See Addendum to Form I-290B*, dated January 31, 2006. In support of her contentions, counsel submits the referenced addendum, medical records, affidavits, letters of recommendation, and school records. 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 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 Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

The record reflects that the applicant failed to comply with an order of voluntary departure, which became an order of removal. The record reflects that the applicant failed to comply with the order of removal until December 4, 1998. The applicant's passport and travel records establish that the applicant departed the United States and returned to Bolivia on December 4, 1998. The record reflects that the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to June 14, 2002, the date on which he received a parent volunteer award for his participation during the 2001-2002 School Year by West Elementary School in Washington, DC. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and must receive permission to reapply for admission.

The record reflects that [REDACTED] is a native of El Salvador who became a lawful permanent resident in 1992 and a naturalized U.S. citizen in 1999. Ms. [REDACTED] has a thirteen-year old son and a twelve-year old son from a previous relationship who are both U.S. citizens by birth. The applicant and [REDACTED] have a ten-year old son, an eight-year old son and a two-year old son who are all U.S. citizens by birth. The applicant is in his 40's and [REDACTED] is in her 30's.

On appeal, counsel asserts that since the filing of the appeal, [REDACTED] has suffered from debilitating migraines and has been forced to stay home and in bed. Counsel contends that she is under the care of various doctors, including a neurologist and that, due to her husband's care and attention, she has recently been able to start the recovery process but is still unable to work, leaving the applicant as the sole provider for the family. Counsel asserts that the applicant provides educational, financial and emotional support for his family. She asserts that the applicant takes his children to school and volunteers in their classrooms. She asserts that the applicant has become a valued member of the school community. Counsel asserts that the applicant cares for his son, [REDACTED] who has asthma and he monitors his medication to ensure his health. Counsel asserts that the applicant has been a coach for his children's soccer team and that he takes the family to church and assists with Sunday school classes. Counsel asserts that the applicant's wife and children will suffer tremendous hardship if the applicant is removed to Bolivia. Counsel asserts that the applicant has provided a stable, safe, healthy environment for his family. She asserts that the applicant's children's success in life will be greatly diminished if they are left in a single-parent home without the support of a strong male role model.

[REDACTED] a, in her letter on appeal, states that in 2004 she was diagnosed with hyperthyroidism and in 2006 with migraines. She states that her health has been in a critical state for three months, leaving her in bed and out of work for approximately two months. She states that she also has to confront the illness of her two sons, [REDACTED] and [REDACTED] who have asthma. She states that the help the applicant provided allowed her to recover and that she can now control her and her children's illnesses. She states that the applicant always takes care of her medical appointments as well as the children's. She states that the applicant is now working and takes the children to their asthma "classes" and helps them with their homework. She states that the applicant's removal would affect her and her children's health. She states that the applicant's removal would affect her children's behavior and development in school.

A medical letter from Doctor [REDACTED] indicates that she feels [REDACTED] and her family would be gravely hurt if the applicant were removed from the United States and that it would help to prevent a downward cascade of health and social problems for the family. The letter indicates that [REDACTED] has several health issues that require regular attention and have been a major source of stress for the family. While a medical prescription reflects that [REDACTED] requires medical management at a neurology clinic, it does not provide a diagnosis or prognosis for [REDACTED]. The record does not establish that [REDACTED] is unable to function on a daily basis or perform work duties due to medical problems.

A letter from Doctor [REDACTED], pediatrician, indicates that the applicant's son [REDACTED], has eczema. The letter also indicates that the applicant's sons, [REDACTED] and [REDACTED], have mild to moderate persistent asthma. The letter states that these children need regular follow-ups at the clinic. The letter states that [REDACTED] has to stay at home with the children for their physical and medical care while the applicant is the sole provider for the family.

Letters from the applicant's pastor, educators and doctors indicate that the applicant is an excellent role model to his children and is very involved in his children's education. The letters indicate that the applicant should not be removed from the United States because of his family and his contributions to the community.

A letter from the Consul General of El Salvador in Washington, D.C. states that the family is a fundamental nucleus of Salvadorian society. She asserts that the separation of the applicant from his family will have severe consequences and requests that the applicant be permitted to stay in the United States with his family.

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 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 AAO finds these precedent legal decisions to 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 U.S. citizen spouse, five U.S. citizen children, the considerable hardship his family, particularly his spouse, will experience if he is removed from the United States, the contributions he has made to his children's school as a Room parent and parent representative on the Local School Restructuring Team, his volunteer activities for his church, and an approved immigrant petition for alien relative. The AAO finds that the applicant's marriage, birth of his children, and approval of the immigrant visa petition benefiting him occurred after the applicant was placed into proceedings. The AAO finds these factors to be "after-acquired equities" and therefore accords them diminished weight in assessing the positive and negative factors in this case.

The AAO finds that the unfavorable factors in this case include the applicant's overstay of his nonimmigrant admission; his failure to comply with an order of voluntary departure that became a final order of removal; his failure to comply with an order of removal until December 5, 1998; his extended unlawful presence and employment in the United States; his reentry into the United States without a lawful admission or parole and without permission to reapply for admission; and his inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, between April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, and December 5, 1998, the date on which he returned to Bolivia, and seeking readmission within ten years of his last departure.

The applicant in the instant case has multiple immigration violations. Based on the totality of the evidence, the AAO concludes that the favorable factors in the present matter are outweighed by the unfavorable factors.

The AAO notes that the applicant is also inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for entering the United States illegally after having been ordered removed.

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. Accordingly, the appeal will be dismissed.



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ORDER: The appeal is dismissed.