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

PUBLIC COPY

H4

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK, NY

Date:

DEC 23 2008

(RELATES)

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)

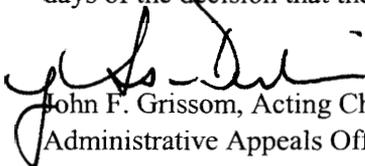
ON BEHALF OF APPLICANT:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, New York, New York 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 Pakistan who, on May 30, 1990, filed an Application for Temporary Residence Status (Form I-687). On September 15, 1998, the applicant attempted to enter the United States at Washington Dulles International Airport. The applicant was not in possession of valid documentation to enter the United States and was informed that, as a Class 2 applicant for temporary resident status he was no longer entitled to employment authorization or residence in the United States pursuant to *CSS v. Reno*. On September 15, 1998, the applicant was placed into immigration proceedings. On October 19, 2000, the immigration judge ordered the applicant removed from the United States. On October 10, 2001, the applicant filed an Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000). On April 26, 2002, the applicant filed the Form I-212. On August 22, 2007, the Form I-485 was denied. On September 10, 2007, the applicant filed a motion to reopen or reconsider the denial of the Form I-485. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). 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 lawful permanent resident son and his U.S. citizen brother.

The district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision* dated June 9, 2008.

On appeal, counsel contends that the applicant deserves a favorable exercise of discretion. *See Form I-290B*, dated July 3, 2008. In support of his contentions, counsel submits the referenced Form I-290B, an affidavit from the applicant, employment and medical and immigration documentation for the applicant's family members. The entire record was reviewed in rendering a decision in this case.

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.
- (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 on a 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's son [REDACTED] is a native and citizen of Pakistan who became a lawful permanent resident in 2008. The applicant's brother, [REDACTED] is a native of Pakistan who became a lawful permanent resident in 1995 and a naturalized U.S. citizen in 2000. The applicant is in his 40's.

On appeal, the applicant contends that a purpose would be served by adjudicating the Form I-212 because he has appealed the denial of his Form I-485. However, the applicant did not file an appeal, but filed a motion to reopen and reconsider the denial of the Form I-485. The AAO, therefore, does not have jurisdiction over the pending motion to reopen or reconsider. The AAO notes, however, that the applicant admits that he is unable to submit evidence to prove that he first entered the United States in 1981, the reason for which his Form I-485 was denied. *See Applicant's Affidavit*, dated July 3, 2008.

The AAO now turns to a consideration of positive and adverse factors in the present case.

The applicant, in his affidavit, states that, except for brief stays outside the United States, he has resided in the United States since 1981. He states that he has been employed since he first came to the United States. He states that he has never applied for or received welfare in the United States. He states that he has been working as an independent driver since June 26, 1998 and there is no likelihood that he will become a public charge. The applicant states that he has not been convicted of any crime. He states that he is in good physical and mental health. He states that he has not committed any fraud in his dealings with U.S. Citizenship and Immigration Services (USCIS). He states that his son is a permanent resident of the United States and is married to a U.S. citizen. He states that his son and his wife have a U.S. citizen son. He states that his brother is a U.S. citizen. He states that he did not return to Pakistan when he was ordered removed because he would be unable to find employment in Pakistan. He states that he has a good job and supports his family. He states that he will be displaced and suffer hardship if he is denied admission to the United States.

A letter from [REDACTED] manager of [REDACTED] dated July 2, 2008, states that the applicant has been affiliated with the company as an independent driver since June 26, 1998. The applicant's Social Security Statement, dated January 16, 2008, indicates that the applicant has been employed in the United States and paid social security and medicare from 1990 through 2006.

The record reflects that the applicant has been issued employment authorization from January 14, 2002, through June 3, 2009. A letter from _____ dated July 2, 2008, states that the applicant had a physical exam and was found to be in good health.

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. *Supra*.

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.

As established by the record, the favorable factors in this matter are the applicant's lawful permanent resident son, his U.S. citizen brother, the general hardship to the applicant and his family if he were denied admission to the United States, his clear background, and the Form I-485. The AAO notes that the applicant's son's adjustment of status to that of lawful permanent resident and the filing of the Form I-485 occurred after the applicant was placed into immigration proceedings. They are, therefore, "after-acquired equities," to which the AAO accords diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; his extended unlawful presence and employment in the United States; and his failure to comply with a removal order.

The applicant in the instant case has multiple immigration violations. The AAO notes that although the applicant has filed a motion to reopen or reconsider his Form I-485, he admitted in his affidavit that he is unable to provide sufficient evidence to establish his entry in 1981. The totality of the evidence demonstrates 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 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.