



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: LONDON, U.K.

Date: JUL 14 2008

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: Self-represented

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 Field Office Director, London, United Kingdom 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 the United Kingdom (U.K.) who, on November 24, 2003, was admitted to the United States as a nonimmigrant visitor under the Visa Waiver Program (VWP). The applicant was authorized to remain in the United States until February 23, 2004. On January 12, 2004, immigration officers took custody of the applicant after being notified by local police that he appeared to be engaging in unauthorized employment in the United States. The applicant was found to be removable pursuant to section 237(a)(1)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(1)(C)(i), as an alien who engaged in unauthorized employment. On February 19, 2004, the applicant was removed from the United States and returned to the U.K., where he has since resided. On March 11, 2005, [REDACTED], a U.S. citizen, filed a Petition for Alien Fiancée (Form I-129F) on behalf of the applicant, which was approved on October 28, 2005. On November 21, 2006, the applicant filed the Form I-212. The applicant is inadmissible 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 return to the United States and reside with his U.S. citizen fiancé and her three U.S. citizen children.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision* dated May 16, 2007.

On appeal, the applicant contends that he was not engaging in unauthorized employment in the United States and that the negative factors listed by the field office director in her decision are false. *See Form I-290B*, dated June 12, 2007. In support of his contentions, the applicant submitted letters from himself, Ms. [REDACTED], her children and friends, financial documentation and copies of documentation previously provided. 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 [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] do not appear to have any children together. [REDACTED] has a 19-year old son, a 16-year old son and an 11-year old daughter from prior relationships who are all U.S. citizens by birth. The applicant and [REDACTED] are in their 40's.

To determine whether the applicant is eligible to receive permission to reapply for admission, the AAO turns to a consideration of positive and adverse factors in the present case.

On appeal, the applicant contends that he was not engaged in unauthorized employment in the United States. He states, in his letter, that he was not holding pool company paperwork at the time of his apprehension and that the only paperwork in the truck consisted of flyers for the pool company and they were in the truck because it was a company truck. He states that the pool company owner retrieved his passport from his house and confirmed to police that, while he had permission to drive the truck, the pool company did not employ him. He states that he is registered as 40 percent disabled due to amputation of half of his right foot, which would render him unable to perform job duties as physically demanding as cleaning pools because he cannot stand for long periods of time. He states, in his letter accompanying the Form I-212, that he was driving the company truck as a favor to the pool company owner because he was unable to drive at the time due to a suspended license. He states that he was wearing a pool company t-shirt because he wanted to protect his clothing from chemical stains and also because the pool company owner had requested he wear one for professional appearances sake. Letters from the pool company owners state that the applicant was driving the pool company truck as a favor to one of the pool company owners whose license was suspended. They state that the applicant has never been an employee of the pool company and did not receive payment of any kind.

However, the record contains a Record of Deportable/Inadmissible Alien (Form I-213), indicating that the applicant was in possession of company paperwork that had been recently printed at the time of his apprehension. The Form I-213 also reports that, several days after the applicant was stopped by the police, a Department of Homeland Security (DHS) official, spoke with one of the pool company's owners. The conversation confirmed the applicant's employment with the pool company and was witnessed by a second DHS officer. The AAO notes that the applicant was removed from the United States as an alien who had engaged in unauthorized employment in the United States.

On appeal, the applicant asserts that he always left the United States prior to the expiration of his authorized stay and that, even though he had failed to return on the date listed on his return ticket to the U.K., the ticket was valid for six months and he would have been able to change the return date to depart the United States prior to expiration of his authorized stay on February 23, 2004. He asserts that he and [REDACTED] have been involved for more than eight years and he has sent her money, jewelry and other gifts over the years. He states that [REDACTED]'s ex-spouse will not permit her to take her two older children outside the State of Florida. He states that [REDACTED] finds it very hard to survive and raise her children because she does not

earn a good income. He states that the situation is a severe hardship for all involved and [REDACTED] has high blood pressure due to the concern that they will be unable to marry and re-unite their family. He states that he finds it difficult to maintain two homes and that he will have to sell the house in Florida if it becomes worse. He states that [REDACTED] and the children will be put out on the street and have to find alternative accommodation. He states that he considers [REDACTED]'s daughter to be his own daughter. He states that he purchased a home for his fiancée and her children so that they could live in a better neighborhood and go to better schools. He hopes that he will be given the benefit of the doubt in regard to driving the pool company truck.

in her letters, states that her ex-husband will not permit her to take their sons out of the United States. She states that her ex-husband would not permit her to take the boys with her to Wisconsin when she *wanted to care for her ailing mother*. She states that, even though she loves the applicant very much she would never leave her sons to move to another country. She states that she and the applicant have been in a relationship. She states that the applicant has given her many gifts, including jewelry, clothes and furniture. She states that he has sent her money to help with groceries, gas, birthday presents, Christmas presents, graduation presents, school supplies and just to have her hair done. She states that she works at Disney and can only afford the essentials. She states that she cannot afford to travel or she would have visited the applicant at least twice per year. She states that she is thinking of getting a second job, which would mean seeing less of her children. She states her situation has been very stressful and her health has suffered. She states that she has gained 35 pounds, has arthritis, her hair is getting thinner and greyer, and she is on medication for high blood pressure. She states that she does not want to wait seven more years to be re-united with the applicant. She states that the applicant will have missed her daughter's childhood by the time he is permitted to return to the United States. She states that it has been a true hardship to be parted from the applicant and that she had to endure the loss of her mother without him by her side. She states that the applicant bought the house into which she and her children moved in January 2004 with the intent to make marriage arrangements.

A letter from [REDACTED]'s ex-spouse, states that he will not permit her to take their children out of the United States.

A letter from [REDACTED]'s eldest child states that, prior to the applicant's removal, he had not realized how big an impact the applicant had on his family's life. He states that the house that he lives in, the computer he types on and his lifestyle are almost completely due to the applicant. He states that, prior to his mother's relationship with the applicant, they were living in a motel and times were tough. He states that he respects and loves the applicant because the applicant has managed to join the family of a divorced wife and three stepchildren. He states that, even though the applicant has not seen them in a long time, the applicant still supports them. He states that his sister does not know her biological father and considers the applicant to be her father. He states that he does not know another man who has been willing to be such a figure in someone's life. He states that he is scared of leaving his family when he attends university because he does not know how they will fare in his absence. He states that the applicant was unable to attend his graduation. He states that the applicant is the person that he goes to on many occasions to seek guidance and comfort for problems and stress. He states that the applicant is a pivotal figure in his life and he admires the applicant's genuine character, generosity, patience and ability to take on the role of father. He states that the applicant has become a member of his family, a husband, father and friend.

A statement of booking details indicates that the applicant was able to make changes to his ticket from overseas, subject to availability. Receipts show the applicant has given money, jewelry and furniture to Ms. [REDACTED] and her children. A printout from [REDACTED]'s pharmacy indicates that she receives prescriptions, but it does not indicate the nature of the prescriptions.

Conviction records reflect that, on October 20, 1995, the applicant was judged guilty for breach of peace and breaching the conditions of bail in Scotland. The applicant's sentence was deferred in favor of 75 hours of community service. On June 21, 1996, the applicant was found guilty of willful fireraising and breach of peace in Scotland. The applicant was admonished. While the field office director did not find the applicant to have been convicted of crimes involving moral turpitude, the AAO concludes that the applicant's conviction for willful fireraising, defined by the Scottish Government as the deliberate setting on fire of property with criminal intent, i.e. arson, is a crime involving moral turpitude. *See Matter of S*, 3 I&N Dec. 617 (BIA 1949). The applicant's conviction, therefore, renders him inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

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 absence of any criminal record since 1996, an approved Form I-129F and his support of and relationship with [REDACTED] and her children. The AAO notes that the filing of the visa petition benefiting the applicant occurred after the applicant was ordered removed, and is an "after-acquired equity." The AAO accords it diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's convictions for breach of peace, willful fireraising and breach of conditions of bail, his inadmissibility pursuant to section 212(a)(2)(i)(I) of the Act, and his unauthorized employment in the United States, which violated his status under the VWP.

The applicant in the instant case has immigration violations and criminal convictions. The applicant's actions in this matter cannot be condoned. 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.