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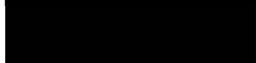
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUL 30 2008

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:

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 Ecuador who, on December 3, 2000, appeared at the Miami International Airport. The applicant presented a photo-substituted Ecuadorian passport and U.S. nonimmigrant visa under the name [REDACTED]. The applicant was traveling with a child, not her own, who was posing as the child listed in the passport with which the applicant attempted to enter the United States. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain admission to the United States by fraud. At the time of apprehension, the applicant indicated a fear of returning to her home country. The applicant was scheduled for a credible fear interview. On December 13, 2000, the applicant was placed into immigration proceedings pursuant to credible fear interview procedures. On March 29, 2001, the immigration judge ordered the applicant removed *in absentia*. On September 25, 2002, a warrant for the applicant's removal was issued. The applicant failed to surrender for removal or depart from the United States. On May 25, 2006, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She 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 legalize her status in the United States.

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated February 27, 2007.

On appeal, the applicant contends that it was never her intention to disregard the immigration laws of the United States and she did not appear at her immigration hearing because she did not have the financial resources to obtain legal representation in Florida. *See Form I-290B*, dated March 19, 2007. In support of her contentions, the applicant submits only the referenced Form I-290B and copies of documentation previously provided. The entire record was considered 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 does not reflect that the applicant has a lawful permanent resident or U.S. citizen spouse, parent or child. The applicant is in her 30's.

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

On appeal, the applicant asserts that she never intended to disregard the immigration laws and she did not appear at her immigration hearing because she did not have the financial resources to fly to Florida or to obtain legal representation. She asserts that she has been in the United States for the past seven years and is a person of good moral character. She asserts that she has a fear of persecution in her home country, which is why she did not return, as it would be an extreme hardship to her.

The applicant, in her letter accompanying the Form I-212, states that she fled Ecuador because she felt she had no choice. She states that, after she started working as a seamstress for a lady, the woman invited her to a special ceremony at her Church. Once at the Church, the applicant states she discovered that the woman was involved in a black magic sect. She states that, after she fled the Church, the woman informed her that she was not in a position to reject her invitation and she did not know what could happen to her family. The applicant states that the woman started to threaten her and sent three men to her home, who beat her into unconsciousness. The applicant states that, after the family moved to a different city, her father disappeared and was later found dead. The applicant states that she believes the woman from the black magic sect is responsible for the death of her father. The applicant states that she believes that if she returns to Ecuador these people will hurt her and her family because she rejected their offer to join their sect. The applicant states that she has never known as much freedom to express herself, thoughts and beliefs, as she has experienced in the United States. She states that she has been sending money to her family in Ecuador to help support them. She states that her main goal is to become a legal immigrant and that the only way she can ever feel safe and complete is in the United States, providing for the family that she had to abandon. She states that she sincerely apologizes if what she has done in the past was not the right thing to do. She states that she will obey the authorities and become a law-abiding citizen of the United States.

Letters of support state that the applicant is a resilient, respectable, responsible, smart and hardworking woman. They state that she is a wonderful person on whom they can count when things need to be done. They state that she has had past tragedies and has put her faith in Christ, which has helped her to stay strong. They state that the applicant has loved her time in the United States and would like to continue living here. They state that the applicant feels a freedom in the United States that she will never feel in Ecuador.

The record reflects that the applicant's legal representative, [REDACTED] was present at the immigration hearing in which the immigration judge ordered the applicant removed *in absentia*. The record also reflects that, upon entering the United States, the applicant expressed a fear of returning to her home country because

“I own [sic] a lot of money” in Ecuador and stated that she had come to the United States in order to obtain employment.

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.

As established by the record, the favorable factors in this matter are the general hardship the applicant and her family in Ecuador will suffer if the applicant is denied admission.

The AAO finds that the unfavorable factors in this case include the applicant's attempt to enter the United States by fraud; her inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act for attempting to enter the United States by fraud; her failure to appear at her immigration hearing; her failure to comply with a removal order; and her extended unlawful presence and employment in the United States.

The applicant in the instant case has multiple immigration violations. Moreover, the record fails to establish that she is the beneficiary of any immigrant or nonimmigrant visa petition that would offer her a means of acquiring lawful residence in the United States. 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 she 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.