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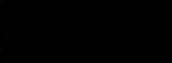
U.S. Citizenship  
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

**MAY 14 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:



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 Director, California 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 Mexico who, on June 23, 1998, appeared at the San Ysidro, California Port of Entry. The applicant presented a Form I-94, Arrival/Departure Record, on which a counterfeit I-551, Lawful Permanent Resident, stamp appeared, under the name [REDACTED]” 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. On June 24, 1998, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant reentered the United States without inspection or admission on an unknown date but prior to September 29, 2000, the date on which he married his spouse, [REDACTED] in Ukiah, California. On May 15, 2001, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on July 7, 2005. On April 26, 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). 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 U.S. citizen spouse.

The director determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(6)(C), 212(a)(9)(A) and 212(a)(9)(C) of the Act, 8 U.S.C. §§ 1182(a)(6)(C), 1182(a)(9)(A) and 1182(a)(9)(C), for attempting to enter the United States by fraud, having been ordered removed from the United States and having reentered the United States without being admitted after being removed from the United States. The director found that each ground of inadmissibility was an independent and alternative basis for denial of the applicant’s Form I-212. The director then determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director’s Decision* dated March 13, 2007.

On appeal, counsel contends that the director erred in finding that the applicant was inadmissible to the United States pursuant to sections 212(a)(6)(C)(ii) and 212(a)(9)(C) of the Act, for making a false claim to U.S. citizenship and for reentering the United States after having been removed. *See Letter in Support of Appeal*, dated April 13, 2007. In support of his contentions, counsel submits the referenced letter in support of appeal, recommendation letters, a letter from the applicant’s spouse, employment 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 native of Mexico who became a lawful permanent resident in 1998 and a naturalized U.S. citizen in 2003. The AAO notes that [REDACTED] and individuals who have written recommendation letters for the applicant indicate that the applicant and [REDACTED] have an approximately one-year old U.S. citizen child. Although the record does not contain a birth certificate for the child, the AAO will consider the child as a positive factor in the applicant's case. The applicant is in his 30's and [REDACTED] is in her 20's.

While the director found that the applicant was inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to U.S citizenship, a ground of inadmissibility for which there is no waiver available, the record does not establish that the applicant has ever made a false claim to U.S. citizenship. The AAO, however, does find that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to obtain admission to the United States by fraud in 1998. To seek a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), the applicant would file an Application for Waiver of Ground of Inadmissibility (Form I-601).

Counsel contends that the director's use of each ground of inadmissibility as an independent and alternative basis for denial of the Form I-212 applies a rule that has been expressly repudiated by the Ninth Circuit Court of Appeals (Ninth Circuit). The AAO finds counsel's contention unpersuasive. While *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004), permits an applicant to apply for permission to reapply for admission from within the United States and is currently the subject of an interlocutory appeal, it does not hold that a Form I-212 should be adjudicated if no purpose would be served in the adjudication when the applicant is mandatorily inadmissible pursuant to another section of the Act, such as 212(a)(6)(C)(ii) of the Act. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). Moreover, the AAO finds that the director merely noted that each ground under which the applicant was inadmissible could serve as an independent and alternative basis for denial of the Form I-212 before she then adjudicated the Form I-212 by determining that the unfavorable factors in the applicant's case were outweighed by his favorable factors.

Counsel, on appeal, contends that the applicant is eligible for adjustment of status under section 245(i) of the Act, which permits certain immigrants who are unlawfully present in the United States to adjust status prior to reinstatement of a prior removal order. However, the AAO has no authority to review the decision in regard to section 245(i) of the Act. The only issue before the AAO is whether the applicant, who is inadmissible

pursuant to section 212(a)(9)(A)(i) of the Act, is eligible for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

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

Counsel, on appeal, submits additional letters of support for the applicant.

██████████ in her letters, states that she and the applicant have been married for seven years and he is the most dedicated husband and father, as well as a good human being. She states that she cannot imagine being separated from him if he had to return to Mexico. She states that the applicant supported her financially and emotionally while she completed her dream of going to college. She states that the applicant has worked at a local vineyard for the past seven years in order to provide a better life to his family. She states that she counts on the applicant financially and emotionally. She states that the applicant has been very supportive of her and her parents. She states that the applicant's parents in Mexico also depend on him financially. She states that their U.S. citizen child is a little person who depends upon her and the applicant for everything. She states that the applicant helps her with the baby, will feed him in the middle of the night and goes with her to all the baby's doctor's appointments and cares for him when he is sick. She states that she needs the applicant to remain in the United States for his family.

Employment letters for the applicant state that he has been a full-time employee for Navarro vineyards since August 1999 and his past employment history and excellent reviews indicate that he will be permanently employed with annual salary increases. They state that the applicant is a hard-working, dedicated employee whose skills would be hard to replace. They state that he has the necessary skills of a good vineyardist, as well as those of a stonemason and carpenter, which has allowed the vineyard to expand its facilities. They state that the applicant's cooperative nature and forthrightness have earned the respect of his fellow employees. They state that the applicant is devoted to his family, is a good member of the community and is the type of immigrant that makes the United States the land of opportunity.

Recommendation letters from friends, colleagues and the community state that the applicant is a much-respected, positive and active member of the community and a responsible employee. They state that the applicant is a person who is community-minded. They state that the applicant and his family's public service contributions as employees and volunteers are invaluable. They state that the applicant is always willing to help those in need. They state that they are fortunate to have the applicant and his family as friends, coworkers and neighbors. They state that the applicant is a hard-working, responsible and trustworthy person. They state that the applicant has provided for his family and it will affect the applicant's child financially and emotionally if the applicant returns to Mexico. They state that ██████████ will have to leave her job at the school where she is a valuable member of the staff. They state that the applicant and ██████████ can be described as "model citizens" and are the kind of people around which you want your children to grow up. They conclude that the applicant and his family are the type of people that make their community and the United States a strong and wonderful place to live.

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 7<sup>th</sup> Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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 U.S. citizen spouse, his U.S. citizen child, the general hardship the applicant's wife and child will suffer if the applicant is denied admission and an approved immigrant visa petition. The AAO notes that the applicant's marriage, the birth of his child and the filing of the immigrant visa petition benefiting him occurred after the applicant was placed into immigration proceedings and ordered removed. These factors are "after-acquired equities" and the AAO accords them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's attempted illegal entry into the United States; his inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act for fraud; his illegal entry into the United States after having been removed; and his extended unlawful presence and employment in the United States.

The applicant in the instant case has multiple immigration violations. The totality of the evidence demonstrates 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.

**ORDER:** The appeal is dismissed.