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U.S. Citizenship
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Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 06 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:

[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.

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 Colombia who, on January 10, 1992, was admitted to the United States as a nonimmigrant visitor. The applicant overstayed her nonimmigrant status and, on February 12, 1992, filed a Request for Asylum in the United States (Form I-589). On March 20 1995, the applicant's Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings. On May 2, 1995, the applicant married [redacted], a lawful permanent resident. On June 20, 1995, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on October 3, 1995. On October 6, 1995, the immigration judge denied the applicant's applications for asylum and withholding of removal and granted her voluntary departure until June 8, 1996. 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 June 30, 1996, the applicant departed the United States and returned to Colombia. On March 29, 2004, the applicant divorced [redacted]. On March 29, 2004, the applicant married her current U.S. citizen spouse, [redacted] in Santa Ana, California. On April 22, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Form I-130 filed on her behalf by [redacted]. On March 2, 2005, the applicant appeared at the Santa Ana, California Field Office. The applicant testified that she had reentered the United States without a lawful admission or parole and without permission to reapply for admission in September 1996. On March 30, 2005, the Form I-130 filed by Mr. [redacted] was approved. On June 24, 2005, the applicant filed the Form I-212. On January 7, 2008, the Form I-130 filed by [redacted] was revoked. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 reside in the United States with her U.S. citizen spouse.

The director determined that the applicant did not warrant a favorable exercise of discretion. *See Director's Decision* dated January 9, 2008.

On appeal, counsel contends that the director applied an inflexible approach to determine whether the applicant qualified for permission to reapply for admission. Counsel also contends that the positive factors outweigh the negative factors in the applicant's case. *See Counsel's Brief,* dated February 28, 2008. In support of his contentions, counsel submits the referenced brief, a declaration from [redacted] a psychological evaluation and medical documentation. 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 Spain who became a lawful permanent resident in 1972 and a naturalized U.S. citizen in 2003. The applicant and [redacted] do not appear to have any children together. The applicant is in her 40's and [redacted]s is in his 50's.

On appeal, counsel asserts that the director improperly discounted [redacted] hardships if the applicant is removed from the United States as an "after-acquired equity." The AAO finds this assertion unpersuasive. The AAO finds that the director did not finds [redacted]' hardships to be an after-acquired equity, however, the director correctly found [redacted] the applicant's U.S. citizen husband, to be an after-acquired equity. 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 those equities acquired by an applicant after he or she has been placed into immigration proceedings, and that those equities are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

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

On appeal, counsel asserts that [redacted] is very ill and suffers from Type II diabetes and depression. Counsel asserts that [redacted]' diabetes in not under control and he takes multiple medications in an attempt to control his disease. Counsel asserts that [redacted] was previously employed as a freelance interpreter and, during periods of temporary employment, [redacted] depended upon the applicant's health insurance. Counsel asserts that the applicant attends [redacted]' doctor's visits and monitors his medication. Counsel asserts that the applicant is employed in the medical field and performs the necessary glucose

monitoring for [redacted]. Counsel asserts that [redacted] has suffered from bouts of depression in the past, which has become worse since the applicant's immigration problems. Counsel asserts that [redacted] depends on the applicant as his "counselor" and, against medical advice, [redacted] does not regularly attend counseling or take medication for his depression. Counsel asserts that [redacted] is a very emotional and distraught man who will suffer emotional and psychological hardship if the applicant is forced to leave the United States. Counsel asserts that, if [redacted] accompanies the applicant to Colombia, he will be unable to afford or obtain medications necessary to control his diabetes. Counsel asserts that the stress of the applicant's immigration problems has already caused [redacted]'s glucose-related problems.

[redacted], in his declaration, states that he suffers from Type II diabetes and depression. He states that, if he accompanies the applicant to Colombia, he will be unable to obtain his medications and, due to his age, it would be very difficult for him to obtain employment. He states that he would not have a place to live in Colombia. He states that his diabetes in not under control, he is visually impaired, he is overweight and finds it difficult to control his weight, and his sex life is affected. He states that the applicant is very understanding. He states that, if it were not for the applicant, he would not have help with his disease. He states that he currently has health insurance through his employment, however, when he was employed as a freelance interpreter, he could only obtain health insurance through the applicant's employment. He states that, should he have to return to freelance interpreting, he will again have to depend upon the applicant for health insurance. He states that he takes Metamorphin, Actos and Glitazide. He states that the applicant reminds him to take his medication and that he would forget to take them without the applicant and end up in the hospital. He states that the applicant attends all of his doctor's appointments and tells him what to do. He states that the applicant tests his blood sugar levels and adjusts his medication accordingly. He states that he has been referred to a psychologist/psychiatrist for counseling and medication on several occasions, but does not have the strength to attend counseling on a regular basis. He states that he has always had emotional trouble dealing with daily life and meeting the applicant gave him hope that he could be loved. He states that he would be lost without the applicant and the thought of her leaving the United States causes him suicidal thoughts, and interferes with his ability to sleep and his daily life. He states that the applicant has resided in the United States for over fifteen years and thinks of the United States as her home. He states that the applicant is gainfully employed as a lab technologist and has always paid taxes. He states that he has difficulty maintaining employment due to his emotional problems. He states that the applicant has never been arrested or convicted of any crimes. He states that the applicant is not only his caretaker, but the first truly romantic relationship he has experienced. He states that the nights he spends talking to the applicant is his therapy. He states that he knows that he probably needs medication for his depression, but the applicant keeps his disease under control. He states that losing the applicant will cause him great mental illness.

A psychological report written by [redacted], a licensed marriage and family therapist, and based on one interview with [redacted], states that [redacted] reported that he has a profusion of emotional symptoms that originated after the applicant began to have immigration problems. [redacted] diagnoses [redacted] with major depressive disorder, single episode, and generalized anxiety disorder. She states that [redacted] reported significant changes in his mental state and his thoughts have been dominated by the potential loss of the applicant. She states that, despite continuous attempts to deal with his psychological reaction, he continues to feel overwhelmed by multiple psychological symptoms and that these symptoms will remain until there is a positive resolution to the applicant's immigration problems. Ms. recommends that undergo a medication evaluation to determine if antidepressants are needed to decrease his symptamotology and that he undergo psychological treatment to develop better coping skills. In that [redacted] findings are based on a single interview with [redacted] the AAO does not

find them to reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional. As a result, the evaluation's conclusions must be considered speculative and of diminished value to a finding of hardship. The AAO notes that the applicant provided no evidence that Mr. [redacted] continues to require treatment for depression or that he has received treatment at any point since Ms. [redacted] diagnosis. Additionally, while Mr. Arribas indicates that he has sought psychological assistance in the past and suffers from suicidal ideation, besides his declaration, there is no evidence to establish these claims. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

A physician's prescription note, written by [redacted], states that [redacted] is a diabetic under his care, who is very compliant with his treatment. The AAO notes that the applicant provided no evidence that [redacted]' disease is not controlled, treatment would be unavailable in Colombia, or that he is visually impaired.

Tax records reflect that the applicant and her spouse have joint income tax returns from 2004 and 2006, and the applicant has an income tax return from 2002. The applicant's Biographical Information sheets (Form G-325) indicate that the applicant has been employed from July, 1993, until June, 1996, and since February, 1999. The applicant received employment authorization from November 10, 1992, until November 15, 1994, from January 25, 1996, until January 25, 1997, and from December 13, 2004, until May 24, 2007.

Finally, the record reflects that, while the applicant had been separated from [redacted] since December 31, 1995, a second Form I-130 was filed on behalf of the applicant on March 26, 1997, based on her marriage to [redacted]. *See Divorce Record.*

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.*

As established by the record, the favorable factors in this matter are the applicant's naturalized U.S. citizen spouse, the general hardship to her spouse if she were denied admission to the United States, her payment of federal taxes and the approved immigrant visa petition for alien relative. The AAO notes that the applicant's marriage and the filing of the immigrant visa petition benefiting her occurred after the applicant was placed into immigration proceedings. These factors are "after-acquired equities," which the AAO accords diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's overstay of her nonimmigrant status; the applicant's illegal reentry after having been removed from the United States; her attempt to conceal her separation from her prior spouse while awaiting an immigrant visa number; and her unlawful presence and employment in the United States prior to filing for adjustment of status.

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.

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.