

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

Hy

FILE:

Office: CALIFORNIA SERVICE CENTER  
(RELATES)

Date: OCT 27 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.

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

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 January 22, 1996, filed an Application for Asylum and for Withholding of Deportation (Form I-589). The applicant indicated that he was a native and citizen of El Salvador who entered the United States in July 1990 without inspection. On January 3, 1997, the applicant appeared at the San Ysidro, California Port of Entry. The applicant presented an I-551 Resident Alien Card bearing the name [REDACTED].” The applicant was found to be inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of valid entry, travel or identity documents at the time of application for admission. The applicant admitted that he was a native and citizen of Mexico but provided a false date of birth and name to immigration officers. **On January 4, 1997, the applicant was placed into immigration proceedings under the name “ [REDACTED] ”** On January 8, 1997, the immigration judge ordered the applicant removed from the United States. On the same day, the applicant was removed from the United States and was returned to Mexico. On December 26, 2003, the applicant married his naturalized U.S. citizen spouse, [REDACTED]. On February 22, 2005, the applicant withdrew his Form I-589, admitting that he was not a native or citizen of El Salvador. On June 30, 2006, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On July 17, 2006, the applicant filed the Form I-212. In response to a request for further evidence, the applicant testified that he reentered the United States without lawful admission or parole and without permission to reapply for admission on January 15, 1997. On October 23, 2006, the Form I-130 was approved. The applicant is inadmissible pursuant to 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 reside in the United States with his U.S. citizen spouse and children.

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 May 4, 2007.

On appeal, counsel contends that the director failed to correctly analyze the probative value of the documentation submitted in support of the applicant’s Form I-212. *See Counsel’s Brief*, dated June 27, 2007. In support of his contentions, counsel submits only the referenced brief. 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 Guatemala who became a lawful permanent resident in 1996 and a naturalized U.S. citizen in 2002. The applicant and [REDACTED] have a 14-year old son who is a U.S. citizen by birth. [REDACTED] has a 22-year old daughter from a prior relationship who is a native of Guatemala and who became a lawful permanent resident in 1996 and a derivative U.S. citizen in 2002. The AAO notes that [REDACTED] claims she and the applicant are in the process of adopting the applicant's nephew, [REDACTED]. However, the record does not contain evidence to establish that a legal adoption has occurred. The applicant is in his 30's and [REDACTED] is in her 40's.

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

On appeal, counsel asserts that the director failed to consider supporting documentation submitted in the applicant's case. Counsel asserts that the only negative factors in the applicant's case are the applicant's prior removal and the acts of alleged misrepresentation. Counsel asserts that, in view of the length of time that has passed since the applicant committed those acts, the absence of further immigration problems and the favorable factors in the applicant's case, a favorable exercise of discretion is warranted.

[REDACTED], in her declaration, states that the applicant has always treated her oldest daughter as if she were his own. She states that they are in the process of adopting the applicant's nephew. She states that she and the applicant have known each other since 1993. She states that the applicant is very devoted and helps her a great deal. She states that they have raised their children to love and respect each other. She states that they are a close family and it is the love and support of that family that had allowed them to grow and prosper in the United States. She states that the family is living through difficult times. She states that the applicant returned to the United States after his removal because he had to care for her and their children. She states that it was not the applicant's intentions to disregard the immigration laws. She states that the applicant currently works as a fine salesman in the wholesale industry and he has always been a hardworking and dedicated employee. She states that he provides for her and the children. She states that she is unable to work because she has to concentrate on the children's educations. She states that she would suffer financially if she had to remain in the United States without the applicant's income because she could never earn sufficient income to support the family. She states that if she accompanied the applicant to Mexico she would be unable to find a job that would meet their living expenses because her job skills are limited. She states that she would suffer emotionally if separated from the applicant and she cannot imagine living without him. She states that the children would be devastated if separated from their father. She states that if she accompanied the

applicant to Mexico, she would be forced to relocate the children, whose educational future would be placed in jeopardy. She states that the children only speak conversational Spanish and would be unable to compete with children in school. She states that the applicant is a good man who is an asset to the United States.

The applicant's stepdaughter, in her declaration, states that she has no contact with her biological father and that the applicant is her "dad." She states that her family truly cares and loves one another and that both she and her younger brother are equally loved and respected. She states that she has continued to live at home because of her respect for the applicant. She states that she wants the applicant to reside in the United States with the family. She states that the family could not survive without him, as he is the center of the family and provides for them financially and emotionally.

The applicant's son, in his declaration, states that he wants his father to stay in the United States because he always helps him with his homework. He states that the applicant always finds time to play with him and has supported him not only in school, but also in sports. He states that the applicant has taught him to be good and he helps the family both financially and emotionally.

A letter from [REDACTED], school social worker at Chester W. Nimitz Middle School, states that the applicant has always been actively involved in his son's educational program and has been an exemplary father who regularly assists in various school activities. She states that the applicant obtained additional academic resources outside of the school to assist his son in improving his grades. The record also includes evidence that establishes the applicant has served as an assistant baseball coach and has participated in parenting classes.

Tax records indicate that the applicant paid federal taxes from 1996 through 2005. The applicant was issued employment authorization from January 1996, until January 1998.

Counsel asserts that the director noted the alleged acts of fraud committed by the applicant, but did not address the documentation presented to explain each alleged act. The record contains a declaration from the applicant explaining that he did not knowingly or willingly file a Form I-589. The applicant claims that an immigration consultant filed the Form I-589 without his knowledge and that he believed he was filing for work authorization. Counsel's and the applicant's contentions are, however, unpersuasive. The Form I-589 is signed by the applicant and states that he was born in El Salvador. Further, no signature appears in Part G of the Form I-589 indicating that the applicant was not assisted in preparing the Form I-589. The record also reflects that the applicant sought entry by fraud in 1997 by presenting an I-551 Resident Alien Card bearing the name [REDACTED] to immigration officers at the port of entry. The AAO finds that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), based on his 1997 attempt to enter the United States by fraud and his 1996 attempt to obtain immigration benefits by fraud. In order to seek a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), an applicant must file an Application for Waiver of Ground of Inadmissibility (Form I-601).

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, stepdaughter and son, the general hardship the applicant's family will suffer if the applicant is denied admission, his payment of federal taxes, the absence of a criminal record, the assistance he has provided to his son's school and an approved immigrant visa petition. The AAO notes that the applicant's marriage, the establishment of his legal relationship to his stepdaughter, the birth of his son and the filing of the immigrant visa petition benefiting him occurred after the applicant was placed into immigration proceedings. These factors are "after-acquired equities" and the AAO will accord them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; his attempt to obtain immigration benefits by filing a Form I-589 claiming Salvadoran citizenship; his attempt to enter the United States by fraud in 1997; his inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act for fraud; his illegal reentry after having been removed from the United States; his

unlawful presence in the United States since his reentry; and his unauthorized employment in the United States since January 1998.

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 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.