



U.S. Citizenship
and Immigration
Services

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H4

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **SEP 09 2008**

RELATES)

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, 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 sustained and the application approved.

The applicant is a native and citizen of El Salvador who, on October 25, 1997, was placed into immigration proceedings after she entered the United States without inspection. On March 9, 1998, the immigration judge ordered the applicant removed *in absentia*. On March 9, 1998, a warrant for the applicant's removal was issued. The applicant failed to depart the United States. On July 9, 1998, the applicant was convicted of possession of a fictitious identity document in violation of Chapter 18.2, section 204.1 of the Virginia Statutes. The applicant was sentenced to ten days in jail, which was suspended, and a fine. On May 24, 1999, the applicant married her lawful permanent resident spouse, [REDACTED]. On March 27, 2001, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. In 2001, the applicant applied for Temporary Protected Status (TPS). The applicant was granted TPS and she has extended her TPS yearly since that date. On September 21, 2004, the Form I-130 was approved. On August 24, 2005, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (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 lawful permanent resident spouse and U.S. citizen daughter.

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. The director also found that the applicant's purchase of a social security card in order to obtain employment in the United States render her inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). *See Director's Decision* dated February 21, 2007.

On appeal, the applicant contends that the director failed to evaluate all of the relevant factors and accord them appropriate weight in denying the Form I-212. *See Counsel's Brief*, dated March 12, 2007. In support of his contentions, the applicant submits only the referenced brief. The entire record was considered in rendering a decision in this case.

On appeal, the applicant contends that the director erred in finding the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), due to her conviction for possession of a fictitious identity document. The applicant contends that she did not commit fraud or willfully misrepresent a material factor before an immigration official or officer of the U.S. government. Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that the applicant's conviction was for possession of another's social security card in order to create a false identity or status. The AAO finds that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, because her conviction does not involve fraud or willful misrepresentation of a material fact in connection with procurement of a visa, other documentation, admission or other benefit

provided under the Act. The applicant's possession of another's social security card was not related to her attempting to obtain any type of *immigration* benefit.

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 and citizen of El Salvador who became a lawful permanent resident in 1998. The applicant and [REDACTED] have an eight-year old daughter who is a U.S. citizen by birth. The applicant and [REDACTED] are in their 30's.

On appeal, the applicant asserts that her failure to appear for her immigration hearing should not be considered a negative factor because an applicant for permission to reapply for admission will necessarily have an order of removal by virtue of making such an application. The AAO finds this assertion unpersuasive. The applicant's failure to appear at an immigration hearing and failure to comply with an order of removal are separate from the applicant's removal order and are appropriately considered as negative factors in adjudicating permission to reapply for admission.

The applicant, in her affidavit, asserts that she failed to appear for her immigration hearing because she did not receive formal notice to appear and lacked the money and knowledge of how to contact an attorney. She states that she remembers being given documents at the time of her apprehension and informed that she would need to appear in court. She states that she understood very little of what occurred and her confusion over the next steps to take combined with her lack of financial resources prevented her from seeking qualified advice, which in turn led to her failure to appear for her immigration hearing. She states that she was also under a lot

of stress associated with her flight from an abusive relationship in El Salvador. The AAO notes that there was proper notice of the applicant's immigration hearing and that the notice of the applicant's immigration hearing informed her that her failure to attend the hearing would result in the order of her removal from the United States. *See Form I-862 and Warning*, dated October 25, 1997. The Form I-862 indicates that the applicant was provided with all relevant information in the Spanish language and was given a specific date and place for her immigration hearing. Furthermore, the Record of Deportable/Inadmissible Alien (Form I-213) indicates that the applicant was provided with a list of pro bono representatives and notification of rights to Salvadorians in the Spanish language. *See Form I-213 and Notice of Rights of Salvadorians*, dated October 25, 1997, and signed receipt by the applicant.

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

The applicant, in her affidavit, states that she endured years of deprivation and poverty in El Salvador and is haunted by memories of the civil war. She states that she left school in fourth grade because her parents needed her assistance with household chores and work. She states that the economic situation in El Salvador made their lives very difficult. She states that, two years after she began to live with [REDACTED] his mother began to beat and mistreat her. She states that [REDACTED] also began to physically, sexually and verbally abuse her. She states that she gave birth to a daughter from her relationship with Mr. [REDACTED] and that they both attempted to leave the abusive relationship with [REDACTED] on at least five occasions. She states that each time she left [REDACTED] he would force her to return to him as she feared for her safety if she refused. She states that she came to the United States in order to flee her abusive relationship with [REDACTED]. She states that she lived with her brother in the United States and began working as a babysitter. She states that [REDACTED] found her in the United States and physically assaulted her in her home, for which he was arrested. She states that she did not testify against him in court because she feared him. She states that she believes [REDACTED] was removed from the United States and returned to El Salvador in connection with the charges brought against him for assaulting her. She states that, due to her abusive relationship with [REDACTED], she found it difficult to consider starting a new relationship. She states that the decade of abuse she endured has made her timid and shy.

The applicant states that through hard work and cooperation she has built a strong and prosperous family with [REDACTED]. She states that they are both determined to provide the best conditions that they can for their daughter, whom they wish to be educated in the United States. She states that she and her family would be emotionally and economically devastated if her application is denied. She states that her relationship with Mr. [REDACTED] would be broken and his heart would be shattered if they are separated. She states that her own emotional distress would be beyond description. She states that she would lose the peace and stability that her family provides and she is afraid that she would again suffer the depression she experienced during her abusive relationship and would lose the desire to live. She states that she would face the possibility of a confrontation with [REDACTED] if she returned to her hometown and her life would be in danger. She states that all of her friends and most of her relatives reside in the United States. She states that there would be no one in El Salvador to protect her from [REDACTED]. She states that she, her husband and her daughters would suffer financial hardship. She states that her husband would suffer a decrease in his standard of living without her income and he would have to use funds to support her in El Salvador. She states that she would be unable to find employment in El Salvador due to her lack of education. She states that her husband's support of her would diminish the funds available for support of her U.S. citizen daughter. She states that her U.S. citizen daughter would have to grow-up without her care and support. She states that this would negatively affect her daughter's performance in school and ultimately limit the opportunities available or her future. She states that,

even though she would finally be able to provide her Salvadorian daughter with personal care, her older daughter's dreams of growing up in the United States would be shattered and she would be deprived of the income the applicant has been providing through her employment in the United States. The applicant, in a second affidavit, states that inconsistencies in her tax returns and applications for TPS in regard to her marital status were clerical errors due to her lack of knowledge of the English language.

█ in his letter, states that the applicant loves her new home and takes pride in cooking in the kitchen and decorating the rooms. He states that the applicant has a fulltime job and receives praise for how hard she works. He states that their goal has been to live the American dream by working hard to provide for their daughter and raising their family the right way in a safe atmosphere, going to church and growing old together. He states that his daughter will start school soon and the applicant has promised their daughter that she will be there for her everyday. He states that they are good people who work hard to love their lives to the best of their abilities. He states that their dream would be destroyed if the applicant is denied admission to the United States.

Country conditions reports in the record state that El Salvador suffers from poverty; 49 percent of the rural population live below the poverty line and 17 percent of the population are illiterate. They state that, despite significant reductions in crime and violence in the last five years, El Salvador still has critical levels of crime and violence.

A letter from the applicant's employer indicates that she has been employed since 2004 at the Washington Dulles Airport Courtyard Hotel. He states that the applicant is very dependable and takes pride in her work. He states that the applicant is always looking for ways to better herself and her family.

Tax records reflect that the applicant has paid federal taxes from 1998 through 2002. The applicant has been issued employment authorization from 2001 until present.

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 applicant's lawful permanent resident spouse, her U.S. citizen daughter, the general hardship to the applicant and her family members in the event of her removal, the absence of a criminal record prior to and since 1998, payment of federal taxes and an approved immigrant visa petition. The AAO notes that the applicant's marriage, the birth of her daughter, and the filing of the immigrant visa petition benefiting her occurred after the applicant was placed into immigration proceedings. The applicant's spouse, daughter and approved immigrant visa petition are "after-acquired equities" and the AAO, therefore, accords them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; her failure to appear at an immigration hearing; her failure to comply with an order of removal; and her unauthorized presence and employment in the United States prior to obtaining TPS in 2001.

The applicant's original illegal entry, her failure to appear for an immigration hearing, her failure to comply with an order of removal, and her unauthorized presence and employment in the United States prior to 2001, cannot be condoned. However, the AAO finds that given all of the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

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 established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application approved.