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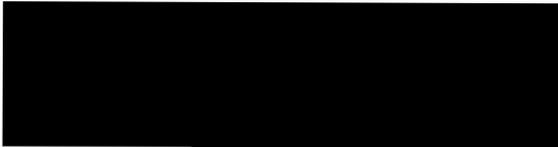
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: SEP 22 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 Haiti who, on December 30, 2001, appeared at the Miami, Florida International Airport. The applicant presented a photo-substituted Haitian passport containing a counterfeit I-551 lawful permanent resident stamp 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. The applicant was placed into secondary inspection, at which time he indicated a fear of returning to his home country. The applicant was scheduled for a credible fear interview. On January 3, 2002, the applicant was placed into immigration proceedings pursuant to credible fear interview procedures. On September 26, 2002, the applicant married his then lawful permanent resident spouse, [REDACTED]. On February 5, 2004, the immigration judge denied the applicant's applications for asylum, withholding of removal and convention against torture and ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On March 29, 2004, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On January 5, 2005, [REDACTED] became a naturalized U.S. citizen. On March 21, 2005, the BIA affirmed the immigration judge's decision. On March 18, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the pending Form I-130. On June 7, 2005, a warrant for the applicant's removal was issued. The applicant filed a motion to reopen with the BIA. On June 30, 2005, the BIA denied the applicant's motion to reopen. On July 18, 2005, [REDACTED] withdrew the Form I-130. On August 5, 2005, the applicant was removed from the United States and returned to Haiti, where he has since resided. On February 6, 2006, the applicant filed the Form I-212. On June 28, 2006, [REDACTED] filed a second Form I-130 on behalf of the applicant, which was approved on October 11, 2007. 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 and daughter.

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 June 11, 2007.

On appeal, [REDACTED] asserts that the misinformation given her by former counsel is the reason for the applicant's failure to sign removal papers, file a waiver correctly and for the withdrawal of the first Form I-130. *See Form I-290B*, dated July 2, 2007. In support of her contentions, [REDACTED] submits the Form I-290B, an addendum to the Form I-290B and a letter from her U.S. Congressional representative. 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 Haiti who became a lawful permanent resident in 2001 and a naturalized U.S. citizen in 2005. The applicant and [REDACTED] have a 5-year old daughter who is a U.S. citizen by birth. The applicant and [REDACTED] are in their 30's.

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

On appeal, [REDACTED] asserts that she is filing an appeal because she was provided with misinformation by her former counsel, [REDACTED]. She asserts that [REDACTED] advised the applicant not to sign removal papers despite having purchased an airline ticket for return to Haiti. She states that [REDACTED] refused to return her telephone calls after the motion to reopen was denied by the BIA. She asserts that the Form I-212 was originally rejected because [REDACTED] misfiled it and provided an incorrect filing fee. She asserts that Ms. [REDACTED] appeared with her on July 18, 2005, and forced her to withdraw her Form I-130. She asserts that she does not know the law and that she hired [REDACTED] to avoid making errors. She states that she is sorry she retained [REDACTED]. On appeal, [REDACTED] submits a letter from Senator [REDACTED], in which he states that [REDACTED] has informed him of her husband's immigration situation and that [REDACTED] hired an attorney who accompanied her to an interview on July 18, 2005. He states that the attorney advised the applicant to refuse to sign removal papers and file an appeal.

The AAO notes [REDACTED]'s claims regarding the legal advice provided her in relation to the applicant's immigration case. However, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Ms. [REDACTED] has failed to meet these requirements. Accordingly, the AAO will not consider [REDACTED]

claims regarding ██████████ in this proceeding.

In his letter, Senator ██████████ states that the situation has caused a great financial hardship for ██████████ and the applicant and that the family should be reunited.

The applicant, in his statement accompanying the Form I-212, states that his wife and child remain in the United States and he desires to join them so that they can continue the life they once shared prior to his removal.

Tax records indicate that the applicant paid federal taxes from 2002 through 2004. The applicant was issued employment authorization from April 29, 2002, until April 25, 2005.

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 and daughter, 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 and an approved immigrant visa petition. The AAO notes that the applicant's marriage, the birth of the applicant's U.S. citizen daughter 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 attempt to enter the United States by fraud in 2001; his inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act for fraud; his failure to comply with a removal order; and his unlawful presence in the United States post-dismissal of his appeal and prior to his removal.

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 record indicates 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 2001 attempt to enter the United States by fraud. To seek a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), the applicant will need to file an Application for Waiver of Ground of Inadmissibility (Form I-601).

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.