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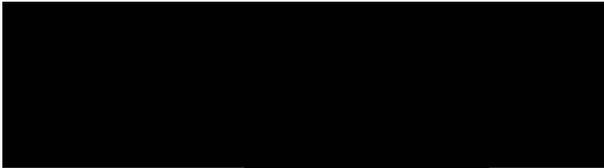
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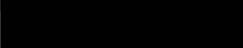


U.S. Citizenship
and Immigration
Services

144



FILE:



Office: VERMONT SERVICE CENTER

Date: **FEB 02 2009**

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)

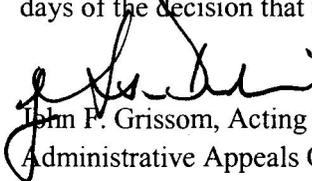
ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting 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 Guyana who, on January 4, 2000, appeared at the Miami, Florida International Airport. The applicant presented a photo-substituted Guyanese passport with Canadian landed immigrant papers bearing the name [REDACTED]. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to obtain admission to the United States by fraud and for being an immigrant without valid documentation. 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 20, 2000, the applicant was placed into immigration proceedings pursuant to credible fear interview procedures. On January 19, 2001, the immigration judge denied the applicant's asylum and withholding of removal applications, making a finding of negative credibility against the applicant. The immigration judge then ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On July 2, 2002, the applicant married his U.S. citizen spouse, [REDACTED]. On October 15, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed on his behalf by [REDACTED]. On December 19, 2002, the BIA dismissed the appeal. The applicant filed a motion to reopen with the BIA. On December 9, 2003, the BIA denied the applicant's motion to reopen. On March 11, 2003, a warrant for the applicant's removal was issued. On June 12, 2006, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (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 February 22, 2008.

On appeal, counsel contends that the positive factors outweigh the negative factors in the applicant's case. *See Counsel's Memo*, dated April 15, 2008. In support of his contentions, counsel submits the referenced memo, affidavits and letters from the applicant, [REDACTED] family and friends, as well as medical and psychological documentation. The entire record was considered 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 _____ is a native of Guyana who became a lawful permanent resident in 1996 and a naturalized U.S. citizen in 2002. The applicant and _____ appear to have a five-year old daughter who is a U.S. citizen by birth. While the applicant claims that he has a mother who is a lawful permanent resident and a sister who is a U.S. citizen, the record does not contain evidence to establish the applicant's relationship to these individuals. The AAO notes that the applicant's birth certificate reflects that his mother is _____ and that, while the applicant claims that _____ is the same person as _____, there is no evidence to establish that it is the same person. As such, the AAO will not discuss or consider the applicant's mother and sister, as well as any related hardships to these individuals, as factors in rendering this decision. The applicant and _____ are in their 40's.

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

On appeal, counsel asserts that the applicant's spouse and daughter will suffer serious consequences should the applicant be removed from the United States. He asserts that _____ will be left to fend for herself and minor child, who desperately needs her father to care for her. He asserts that the applicant's daughter loves the applicant very much and has a very strong attachment to him. He asserts that the applicant did not leave the United States and failed to indicate a U.S. Consulate at which he would apply for an immigrant visa, because of his fears of persecution in Guyana.

_____ in her affidavit, states that she and the applicant have a five-year-old daughter who is extremely attached to the applicant. She states that if the appeal is denied it will cause extreme and exceptional hardship to herself and her daughter.

The applicant, in his affidavit, states that he lives with his spouse, daughter, mother and sister. He states that they are a close-knit family that is committed to loving and caring for one another. He implores that he not be separated from his family. He states that his departure from the United States will bring utter chaos to his family life.

A letter from [REDACTED], priest of the [REDACTED], indicates that the applicant, [REDACTED] and their daughter are members of the congregation. He states that the applicant has maintained an honorable marriage and fatherhood of his child. He states that the applicant has lent willing hands to the Temple and made significant contributions to the lives of others in the Temple and the community. He states that the applicant's departure and removal from the congregation and his immediate family will bring destitution and other undue hardship.

A letter from [REDACTED] of [REDACTED] c., indicates that the applicant is an active member of and volunteer with the religious group. He states that the applicant has been involved with the group for five years and that he has found the applicant to be very disciplined, courteous, respectful and sincere.

Recommendation letters from the applicant's friends and family state that the applicant is a generous, honest, hardworking, respectful, trustworthy, responsible, diligent, ambitious, determined, pleasant, mild-mannered, light humored, organized, efficient, honorable and courteous person. They state that the applicant regularly attends Temple and actively participates in religious activities and fundraising efforts. They state that the applicant has shown a willingness to go beyond the call of duty. They state that the applicant is a leader, rather than a follower. They state that, in addition to his scholastic achievements, the applicant has proven his leadership ability by organizing the Temple's cricket team. They state that the applicant's good judgment and mature outlook ensures a logical and practical approach to his endeavors. They state that the applicant would be an asset to any organization. They state that the applicant comes from a responsible family and has never failed to meet the expectations of his peers. They state that the applicant has shown great stability and growth in the United States. They state that the applicant is a very loving father, considerate husband and a very affectionate and caring son. They state that the applicant and [REDACTED] are a close couple who enjoy each other's company. They state that the couple displays a very loving, sharing and caring relationship and are family-minded. They state that the applicant enjoys a peaceful life and is a wonderful part of the community. They state that the applicant is determined to make his dreams come true in the United States. They state that the applicant epitomizes a great father, a family man and a diligent breadwinner. They state that [REDACTED] and the couple's daughter will be very distraught if the applicant has to leave the United States. They state that it is harsh punishment for the family to be separated. They state that the applicant's separation from his family will cause severe hardship. They state that the applicant's daughter needs the applicant during her childhood.

A psychological report written by _____ a licensed psychologist, and based on one interview with the applicant, [REDACTED] and their daughter, states that [REDACTED] is a college graduate who is very close to her family, speaking with them on a daily basis and visiting them regularly. He states that the applicant's father has had a heart attack and angioplasty, while her mother has diabetes and high blood pressure. Ms. [REDACTED] reported that she felt she would be unable to support the expenses of the household without the

applicant's income. Ms. [REDACTED] reported that she had become depressed as a result of her fear that the applicant will have to return to Guyana and she and their daughter would become separated from him. Ms. [REDACTED] reported that she has difficulty falling asleep; wakes up repeatedly during the night; her appetite is poor; she has lost more than ten pounds; she has difficulty focusing, concentrating and paying attention; and she is persistently sad, chronically anxious and has numerous crying spells. Ms. [REDACTED] reported that her sexual libido has diminished and she has had suicidal thoughts, which include throwing herself in front of a train. [REDACTED] found that [REDACTED] had not made any suicidal gestures. Mr. [REDACTED] diagnoses [REDACTED] with major depressive disorder, noting that Ms. [REDACTED] should consult her physician for a medication evaluation. Mr. [REDACTED] states that the applicant's daughter is in pre-kindergarten and is an affectionate and alert child, who relates extremely well, even with strangers. Mr. [REDACTED] cites [REDACTED], indicating that children, who are separated from a parent for a significant period of time, are at risk for the development of anxiety disorders, depressive symptomatology and symptoms of isolation. Mr. [REDACTED] concludes that the applicant's daughter will learn to mistrust her world if she is separated from the applicant. Mr. [REDACTED] finds that the applicant's daughter will develop separation anxiety disorder and depressive symptomatology as a direct result of separation from the applicant if he has to return to Guyana. Mr. [REDACTED] states that depressive symptomatology takes the form of failure to thrive, listlessness and apathy in children. [REDACTED] concludes that it would represent hardship to [REDACTED] and her daughter to be separated from the applicant and that it would be in their best interests if the applicant were able to remain in the United States. The record contains a prescription issued to [REDACTED] for Zoloft, dated three days after [REDACTED] conducted his interview. In that [REDACTED] findings are based on a single interview with [REDACTED] and her daughter, 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 there is no evidence that [REDACTED] continues to require treatment for depression.

A Good Conduct Certificate from the City of New York, dated October 12, 2007, reflects that the applicant does not have a criminal record.

The record reflects that the applicant has been employed in the United States since May 2001. The applicant was issued employment authorization from April 10, 2001, until May 16, 2003.

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for presenting fraudulent documentation to an immigration officer in an attempt to gain entry into the United States in 2000. In order to seek a waiver of inadmissibility under section 212(i) of the Act, 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. *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.*

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 naturalized U.S. citizen spouse, his U.S. citizen daughter, the general hardship to his family if he were denied admission to the United States, his otherwise clear background and the pending immigrant visa petition for alien relative. The AAO notes that the applicant's marriage, the birth of his 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," which the AAO accords diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's attempt to enter the United States by fraud; his inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act; the immigration judge's negative credibility finding; the applicant's failure to comply with an order of

removal; his unlawful presence in the United States since December 19, 2002; and his unauthorized employment in the United States since May 16, 2003.

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.