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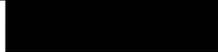
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

**FEB 27 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)

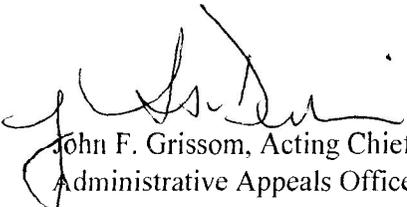
ON BEHALF OF APPLICANT:



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, Nebraska 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 December 2, 1996, was apprehended during the execution of a search warrant. On the same day, the applicant was placed into immigration proceedings. On December 12, 1996, the immigration judge ordered the applicant removed from the United States. On December 13, 1996, the applicant was removed from the United States and returned to Mexico. The applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission on December 15, 1996. On September 28, 2003, the applicant married her spouse, [REDACTED]. On November 2, 2006, the applicant filed the Form I-212. On November 8, 2006, [REDACTED] filed a Refugee/Asylee Relative Petition (Form I-730) on behalf of the applicant, which was approved on March 20, 2008. The applicant is inadmissible pursuant to 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 son.

The director determined that the applicant was inadmissible pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and 1182 (a)(2)(C), for having been convicted of a controlled substance violation that is not simple possession of marijuana less than 30 grams, and for being an illicit trafficker of a controlled substance. 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 July 25, 2007.

On appeal, counsel contends that the director erred in finding the applicant inadmissible pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. Counsel contends that the applicant warrants a favorable exercise of discretion. *See Counsel's Brief*, dated November 19, 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-
  - (1) 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 and citizen of Guatemala who became a lawful permanent resident in 2007. The applicant and \_\_\_\_\_ have a six-year old son who is a U.S. citizen by birth. The applicant and \_\_\_\_\_ are in their 30's.

On appeal, counsel asserts that the director erred in finding the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act.<sup>1</sup> The director based his determination on a Record of Deportable Alien (Form I-213), indicating that the applicant had been apprehended in an apartment that contained drugs, weighing scales and a large amount of cash during the execution of a warrant. The Form I-213 indicates that the applicant was the only individual in the apartment at the time of execution of the search warrant. The Form I-213 indicates that drug enforcement agents had purchased drugs from the apartment on three occasions. The Form I-213 indicates that the writer believes the applicant is involved in drug dealing. Counsel asserts that the director failed to give the applicant adequate notice and opportunity to rebut the information contained in the Form I-213. However, the AAO finds that the applicant has been given such an opportunity through the filing of this appeal. The applicant, in a declaration, states that she has never been involved with drugs and that the items found during the execution of the search warrant belonged to a boarder who was later convicted of two counts of drug dealing.

The AAO finds that the evidence does not establish that the applicant has ever been convicted of a violation of law related to a controlled substance and she is, therefore, not inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act. The AAO also finds that the information in the Form I-213 in the applicant's case does not meet the standard for "reason to believe" required to find an applicant inadmissible pursuant to section 212(a)(2)(C) of the Act. While the applicant was found in an apartment with drugs, weighing scales and a large amount of cash, this information was received as second-hand knowledge from the arresting agency. Furthermore, the arresting agency did not specify

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<sup>1</sup> The AAO notes that counsel also asserts that the director did not have the authority to determine that the applicant is inadmissible to the United States because that determination is only made by immigration judges as designated in section 240(a)(1) of the Act. The AAO finds counsel's assertion unpersuasive. Section 240 of the Act refers only to removal proceedings and the applicant is not in removal proceedings. Counsel's assertion also runs contrary to the applicant's ability to seek permission to reapply for admission from the director, as the director must be able to determine that the applicant is inadmissible in order to be able to grant permission to reapply for admission.

in the information given whether the applicant was the individual from whom the drug enforcement agents had previously bought drugs. Without first-hand knowledge or more specific information from the arresting agency, the writer of the Form I-213's determination that the applicant was involved in drug dealing does not equate to probative evidence of her involvement in drug trafficking.

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

On appeal, counsel asserts that the applicant fled an abusive relationship with her father by coming to the United States. Counsel asserts that [REDACTED] also sought protection in the United States because of the persecution he suffered in Guatemala.

The applicant, in her letter, states that she fled Mexico because her father was an abusive alcoholic and life was hard. She states that she and [REDACTED] had their son seven years after they became a couple. She states that she and [REDACTED] finally have the family that they wanted. She states that their son is everything to them. She states that she wants her son to have the opportunity to go to school. She states that to separate their family would be painful because they have never been separated. She states that it would be deeply painful for her son to be separated from one of his parents.

[REDACTED] in his letter, states that since he left Guatemala he has strived for a better life. He states that he still has trouble sleeping. He states that he works for [REDACTED] and has increased his pay from \$6.50 per hour to \$16.42 per hour. He states that he is now living and the future he sees is beautiful. He states that he owns three homes and is starting a gardening business. He states that he cannot be separated from the applicant. He states that he cannot live in Mexico because he does not have any status in Mexico. He states that he has already lost his mother and father and he does not want to lose his wife and son.

A psychological diagnostic report dated in 2005, written by [REDACTED] a licensed psychologist, and based on one two-hour interview with [REDACTED], states that [REDACTED] experiences a number of disturbing symptoms which fit the criteria for Post Traumatic Stress Disorder (PTSD). [REDACTED] states that [REDACTED] symptoms of intrusive thoughts and dreams, diminished interest in significant activities, and hyper arousal, evidenced by problems with sleep, irritability and hyper vigilance are classic indicators of PTSD. She states that the psychological damage [REDACTED] experienced in his past has clinically significant enduring impacts on his thoughts and his PTSD symptoms are chronic in nature. She states that [REDACTED] ability to cope with these symptoms in general has been inadequate, but his coping ability has been overwhelmed as he has needed to retell and relive his past in preparation for his immigration hearing. She states that [REDACTED] reports being fearful for himself, wife and child, if they were to return to Guatemala. Dr. [REDACTED] states that it is likely that returning to Guatemala would be traumatizing to [REDACTED] and would exacerbate his current PTSD symptoms. Dr. [REDACTED] recommended that [REDACTED] begin psychotherapy. 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 report'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 PTSD and the report does not make any statement in regard to possible affects of either a separation from his spouse or his accompaniment of her to Mexico.

The record reflects that at the time the applicant was apprehended, even though she stated she was not employed in the United States, she was in possession of a counterfeit lawful permanent resident card and social security card.

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 lawful permanent resident spouse, her U.S. citizen son, the general hardship the applicant and her family will suffer if the applicant is denied admission, and an approved immigrant visa petition. The AAO notes that the applicant’s marriage, the birth of her child 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” and the AAO 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 apprehension in connection with drug trafficking paraphernalia; her possession of a counterfeit lawful permanent resident card and social security card; her illegal reentry after having been removed from the United States; and her extended unlawful presence in the United States.

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.