



U.S. Citizenship
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FILE:

[REDACTED]

Office: PHOENIX, AZ

Date:

JUL 06 2009

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)

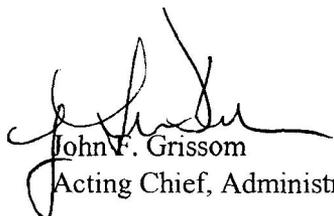
ON BEHALF OF APPLICANT:

[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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Acting District Director, Phoenix, Arizona 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 October 10, 1990, married his then lawful permanent resident spouse, [REDACTED] in Phoenix Arizona. On November 20, 1990, the applicant appeared at the Nogales, Arizona port of entry. The applicant presented a counterfeit I-688 temporary resident alien card. The applicant was placed into secondary inspections. The applicant admitted that the document was fraudulent and that he did not have valid documentation to enter. The applicant was returned to Mexico. On November 19, 1991, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on May 29, 1992.

On June 17, 1994, immigration officers apprehended the applicant during an I-9 compliance inspection at his employment. The applicant had claimed to be a United States citizen named [REDACTED] and had presented a social security card in the same name. On November 21, 1994, the applicant was placed into immigration proceedings for entering the United States without inspection in November 1990. On December 20, 1995, the immigration judge ordered the applicant removed from the United States *in absentia*. On February 21, 1996, the applicant filed a motion to reopen with the immigration judge. On the same day, the applicant was granted a stay of removal until the motion to reopen was decided. On April 1, 1996, the immigration judge denied the motion to reopen. On April 12, 1996, the applicant was removed from the United States and returned to Mexico.

On April 9, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. On the same day, the applicant filed the Form I-212. On March 25, 2002, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) Phoenix, Arizona District Office. The applicant testified that he had reentered the United States without inspection in April 1996. On September 9, 2002, the applicant's Form I-485 was denied. 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) for a period of ten years. 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 now naturalized U.S. citizen spouse and his two U.S. citizen children.

The acting district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Acting District Director's Decision* dated October 31, 2005.

On appeal, counsel contends that the applicant's application for permission to reapply admission should be granted. *See Counsel's Letter*, dated December 21, 2005. In support of his contentions, counsel submits the referenced letter, copies of case law and copies of documentation previously provided. 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 Mexico who became a lawful permanent resident in 1977 and a naturalized U.S. citizen in 2008. The applicant and [REDACTED] have a sixteen-year-old son and a thirteen-year-old son, who are both U.S. citizens by birth. The AAO notes that counsel contends that the applicant's mother is a lawful permanent resident; however, the record does not contain evidence to establish that the applicant's mother has any legal status in the United States. The applicant is in his 30s and [REDACTED] is in her 40s.

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

Counsel, on appeal, states that the applicant's marriage and birth of his first child occurred almost 2 years prior to the applicant's apprehension. Counsel states that the basis for the applicant's removal and the recency of his removal should be considered inconsequential in the applicant's case. Counsel states that the applicant was not arrested as a result of bad behavior but rather as a result of an inspection at his place of employment. Counsel states that the applicant seeks admission more than nine years after his removal. Counsel states that the applicant is a long-time resident of the United States and first entered in 1988. He states that his parents are both permanent residents, but that, unfortunately, the applicant's father died in the 2002. Counsel states that the applicant is now financially responsible for supporting his mother. Counsel states that the applicant supports his spouse, mother and two U.S. citizen children. Counsel states that the applicant's good moral character is apparent, since he is involved in a church group and attends services every Sunday. Counsel states that the applicant's respect for the law is proven by his lack of any criminal convictions. Counsel states that the applicant attempted to enter and reenter the United States

without inspection out of desperation, because all of his relatives were living in the United States. Counsel states that the applicant is aware that using false documents to gain employment was wrong and that he feels remorse for what he did. Counsel states that the applicant still believes that this was the only choice he had to continue supporting his family. Counsel states the applicant's reformation and rehabilitation are clear, as the applicant is an outstanding citizen who volunteers at his church and is busy providing for his family. Counsel states that the applicant is responsible for providing guidance and financial support to his family and takes his family responsibilities very seriously. Counsel states that the applicant has a stable work history and he owns property in the United States. Counsel states the applicant is an asset to the community.

in a letter accompanying the Form I-212, states that she and her children would suffer an emotional and psychological trauma if they are separated from the applicant. She states that the applicant is an excellent father and husband and that they have good communication with the children. She states that she and the children depend on the applicant economically. She states that it would be difficult to break the dreams of her children since they want to study in the United States and it is difficult to think of returning to Mexico since she no longer has parents. She states that they do not have anywhere to live in Mexico and the majority of their family lives in the United States. She states that the applicant is a hard-working man that provides the best to his family. She states that the applicant is respected by others because he does not cause problems and he is a good example to his children. She states that it will be impossible for them to live without the applicant.

A letter from the applicant's mother states that the applicant arrived in the United States in 1987. She states that the applicant has always been a good man and that he has never had problems with the law. She states that the applicant has always been a person who works hard so that his family never lacks. She states that the applicant has always been a good neighbor and friend to those around him. She states that the applicant is a person that respects himself and others. She states that she cannot imagine the applicant leaving the United States. She states that it would be very difficult because the applicant worships his children and spouse.

Letters of recommendation from friends and family members state that the applicant has resided in the United States since 1987. They state that the applicant has always been a good citizen, brother, excellent father and loving husband. They state that it would be difficult for the family if they are separated. They state that he has never had any problems with the law, has been a good neighbor, and is a person that goes to church. They state that the applicant shows his children the right way to live. They state that the applicant is a hard worker and has been able to care for his family's needs. They state that the applicant is a responsible, honorable, honest, serious and well mannered person. They state that the applicant has participated in many charitable activities and cleaning of the nearby neighborhoods. They state that the applicant has been employed for many years. They state that the applicant is a good role model for his children and the children in the neighborhood.

A letter from [REDACTED] of Saint Edward the Confessor Catholic Church states that the applicant has been a member of the men's club and Parrish for the past nine years. He states that the applicant volunteers his services when they are needed. He states that the applicant and his family attend Sunday mass on a regular basis. He states that the applicant's youngest child is attending its religious education program and that his oldest son has completed its Sacrament program. He states that the applicant is known to him as a law-abiding person with a very good character.

A letter from [REDACTED] community manager of the Palladium, states that the applicant has been employed with them since October 2, 2000. She states that the applicant has been recognized as one of the company's finest employees. She states that in July of 2002 the applicant was promoted to maintenance supervisor of a newly acquired property. She states that the applicant has always been a reliable employee and he performs quality work on a daily basis. She states that the applicant is a very warm and honest person and that he and his family attend all of the company functions.

A letter from [REDACTED] Property Management Care Inc. President/Founder, states that the applicant was his employee from 1993 until September 2000. He states that the applicant went beyond the call of duty and has been an asset. He states that he recommends that the applicant should be permitted to remain in the United States and that he has been an excellent contribution to society.

The AAO notes that, while the applicant's claim to U.S. citizenship in completing the Form I-9 does not render him inadmissible under section 212 (a)(6)(C)(i) of the Act, 8 U.S.C. §1182 (a)(6)(C)(i), because it was made prior to September 30, 1996, the applicant is still inadmissible under this section of the Act for attempting to enter the United States by presenting a counterfeit temporary resident alien card in 1990. *See Section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii)*. Additionally, the AAO notes that the applicant's actions in regard to completing Form I-9 are relevant factors to be considered in rendering a decision.

The record contains documentation evidencing that both of the applicant's children attend school. These records do not reflect that the children have any difficulties in school.

The record reflects that the applicant has been employed in the United States since 1988 until the present time. The applicant was issued employment authorization from April 27, 1999 until April 26, 2001, April 14, 2001 through May 30, 2002 and June 12, 2002 until June 11, 2003. The record contains evidence that the applicant filed joint federal taxes from 1999 through 2001.

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. An after-acquired equity is an equity acquired after an applicant has been placed into immigration proceedings.

As established by the record, the favorable factors in this matter are the applicant's U.S. citizen spouse, the applicant's two U.S. citizen children, the general hardship to the applicant and his family members if he were denied admission to the United States, his otherwise clear background, his filing of joint federal taxes and the approved immigrant visa petition filed on his behalf. The AAO notes that the births of both the applicant's children occurred after the applicant was placed into immigration proceedings. These are, therefore, "after-acquired equities," to which the AAO accords 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 enter the United States by fraud; his inadmissibility under section 212(a)(6)(C)(i) of the Act; his illegal reentry into the United States after having been returned to Mexico; his presentation of a fraudulent social security card and claims to U.S. citizenship in completing employment documentation; his failure to appear at an immigration hearing; his failure to comply with a removal order; his illegal reentry into the United States after having been removed; his unauthorized and unlawful presence in the United States; and his unauthorized employment in the United States except for dates during which he had been issued employment authorization.

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.