

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
*Office of Administrative Appeals*, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



44

JUL 06 2009

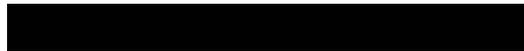
FILE:



Office: VERMONT SERVICE CENTER

Date:

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

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Acting 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 Columbia who, on February 28, 1990, appeared at John F. Kennedy International Airport. The applicant presented a Colombian passport containing a nonimmigrant visa bearing the name [REDACTED]." The applicant was placed into secondary inspections. Further investigation of the passport revealed that the passport informational page had been photo substituted and cut from another passport. Despite presenting these facts to the applicant, the applicant continued to insist that her name was "[REDACTED]." The applicant eventually admitted to her true identity and was placed into immigration proceedings for fraud. On March 6, 1990, the immigration judge ordered the applicant removed from the United States. On March 8, 1990, the applicant was removed from the United States and returned to Columbia.

On March 23, 1995, the applicant's then lawful permanent resident father filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on November 1, 1995. On November 28, 2000, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on the approved Form I-130. On December 5, 2002, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) New York City District Office. The applicant testified that she had entered the United States without inspection on June 7, 1990. On July 1, 2003, the Form I-485 was denied for fraud. On January 5, 2006, the applicant filed a second Form I-485. On November 28, 2006, the applicant filed the Form I-212, indicating that she continued to reside in the United States. 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 now naturalized U.S. citizen father, lawful permanent resident mother, two U.S. citizen brothers and one lawful permanent resident brother.

The acting director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Acting Director's Decision* dated August 13, 2008.

On appeal, counsel contends that positive factors outweigh the negative factors in the applicant's case. *See Form I-290B*, received September 15, 2008. In support of his contentions, counsel submits the referenced Form I-290B, a cover letter and copies of family members' immigration documents. 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.

On appeal, counsel contends that the applicant did not believe that she was removed from the United States in 1990 and that she left voluntarily. Counsel contends that the applicant was unaware of the fact that she was barred from reentering the United States for a period of one year. Counsel contends that much of the applicant's immigration issues stem from the applicant's misunderstanding of the removal order in 1990. The AAO, however, finds that the applicant was fully aware that she was ordered removed from the United States and was required to remain outside the United States after removal. The record contains documentation establishing that the applicant was present before the immigration judge at the time she was ordered removed. The record also contains a warning to the applicant (Form I-296) bearing the applicant's right index finger print and signature to confirm that she received a warning that she was required to remain outside the United States or obtain permission to reapply for admission prior to reentering the United States.

On appeal, counsel contends that the applicant did not misrepresent that she had not been previously removed from the United States in completing the questions on the Form I-485. Counsel contends that the applicant left the responses to these questions blank, as she was unsure of the information and did not want to make a mistake. Counsel contends that the applicant did not affirmatively deny that she had been removed from the United States at any time. The AAO, however, finds that, in seeking to adjust her status, the applicant misrepresented that she had not been removed from the United States, had never been arrested in the United States, and had not, at any time, made a misrepresentation in seeking entry into the United States. The record reflects that the questions on the Form I-485 were all completed by the applicant in the negative. The record further reflects that, during her interview, the applicant responded verbally that she had not been removed from the United States, had never been arrested in the United States, and had not made a misrepresentation in seeking entry into the United States. The record reflects that, at no time during her interview, did the applicant seek to explain or clarify her arrest and removal from the United States in 1990 to the immigration officer.

The AAO notes that the record does not contain a complete birth certificate or other documentation to establish that [REDACTED] is the applicant's mother or that [REDACTED] is the applicant's father; however, for purposes of adjudicating the application before it, the AAO will accept that the applicant's mother is a native and citizen of Columbia who became a lawful permanent resident in 1996, and the applicant's father is a native of Columbia who became a lawful permanent resident in 1982 and a naturalized U.S. citizen in 2000. The AAO again notes that the record does not contain birth certificates or other documentation to establish the relationship between the applicant and her siblings; however, for purposes of adjudicating the application before it, the AAO will accept that the applicant has three siblings, that two of the applicant's brothers are natives of Columbia who became a lawful permanent resident in 1989 and naturalized U.S. citizens in 1995 and 2006, respectively, and that the applicant's other brother is a native and citizen of Columbia who became a lawful permanent resident in 1989. The applicant is in her 50s, the applicant's mother is in her 70s and the applicant's father is in his 80s.

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

Counsel, on appeal, states that, while it is true that the applicant worked after the expiration of her employment authorization, she paid taxes and has never received welfare or other social assistance while living in the United States. Counsel states that all of the applicant's negative factors occurred more than eighteen years ago.<sup>1</sup> Counsel states that the applicant has lived a law-abiding life, worked hard and supported herself. Counsel states that the applicant has spent almost 18 years of her life living and working in the United States and has been an asset to the community. Counsel states that the applicant has never been in trouble with the law.

The applicant's father, in a letter accompanying the Form I-212, states that he has a very close relationship with the applicant. He states that, as he gets older, the applicant's presence in the United States is a great aid and comfort in his care.

A Good Conduct Certificate from The City of New York Police Department, dated May 15, 2006, indicates that the applicant does not have a criminal record in the area.

The record reflects that the applicant has been employed in the United States since at least June 1991. The record contains documentation establishing that the applicant has filed federal taxes from 1999 through 2001 and in 2005. The applicant was issued employment authorization from January 20, 2004 until January 19, 2005.

The AAO notes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud in 1990, and for attempting to seek immigration benefits by misrepresentation or fraud in 2000 (Form I-485) and 2002 (interview). An applicant may seek a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), by filing an Application for Waiver of Grounds of Inadmissibility (Form I-601).

---

<sup>1</sup> As discussed above, the AAO has found that the applicant has engaged in further misrepresentation in an attempt to become a lawful permanent resident.

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 father, her lawful permanent resident mother, the applicant's two U.S. citizen siblings and one lawful permanent resident sibling, the general hardship to the applicant and her family members if she were denied admission to the United States, her otherwise clear background, her filing of federal taxes and the approved immigrant visa petition filed on her behalf. The AAO notes that the applicant's

mother's adjustment of status to that of lawful permanent resident and the filing of the immigrant visa petition benefiting her occurred after the applicant was placed into immigration proceedings. They 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 attempt to enter the United States by fraud; her inadmissibility under section 212(a)(6)(C)(i) of the Act; her unlawful entry into the United States after having been removed; her unauthorized and unlawful presence in the United States; her unauthorized employment in the United States except for periods of employment authorization; and her attempt to obtain adjustment of status by concealing her prior removal and attempted fraudulent entry.

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.