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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

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FILE:

[Redacted]

Office: NEW YORK, NY  
RELATES)

Date:

MAY 06 2009

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

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York, New York 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 Colombia who, on June 29, 1996, was admitted to the United States as a K-1 nonimmigrant fiancée to [REDACTED], a U.S. citizen. The applicant overstayed her nonimmigrant status, which expired on July 14, 1996, and failed to marry [REDACTED] and file appropriate documentation to adjust her status to that of a lawful permanent resident. On October 13, 2000, the applicant was convicted of bribery of public officials in violation of 18 U.S.C. §§ 201(b)(1)(A) and (2). The applicant was sentenced to five years of probation. On the same day, the applicant was placed into immigration proceedings. On February 7, 2002, the applicant filed a Petition for Amerasian, Widow or Special Immigrant (Form I-360) on her own behalf. On August 6, 2002, the Form I-360 was denied.

On October 18, 2002, the applicant married her U.S. citizen spouse, [REDACTED] in Brooklyn, New York. On November 1, 2002, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On February 6, 2003, the immigration judge denied the applicant's application for voluntary departure and ordered her removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On April 12, 2004, the BIA dismissed the applicant's appeal. The applicant filed a petition for review with the Second Circuit Court of Appeals (Second Circuit). On December 2, 2004, the Form I-130 was approved. On September 8, 2005, the Second Circuit denied the applicant's petition. The applicant failed to depart the United States. On November 9, 2005, the applicant filed the Form I-212, indicating that she continued to reside in the United States. On September 9, 2008, the applicant was removed from the United States and returned to Colombia. 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 U.S. citizen spouse and U.S. citizen child.

The district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision* dated July 12, 2007.

On appeal, counsel contends that the applicant warrants a favorable exercise of discretion. *See Counsel's Brief*, received November 5, 2008. In support of her contentions, counsel submits the referenced brief, recommendation letters and probation letters. 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 U.S. citizen by birth. The applicant and [REDACTED] have a six-year-old daughter who is a U.S. citizen by birth. The applicant and [REDACTED] are in their 40's.

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

On appeal, counsel states that the applicant has many ties to the United States. She states that the applicant is married to a U.S. citizen and has a U.S. citizen daughter. She states that the applicant is the beneficiary of an approved immigrant visa petition. She states that the applicant is involved with charitable organizations and dedicates her time and effort to the less fortunate. She states that the applicant is a dedicated mother to her child and also her mother-in-law, who is very ill. She states that the applicant provides child care to one of her friend's children. She states that [REDACTED] will experience hardship if the applicant is not permitted to reenter the United States as a lawful permanent resident. She states that [REDACTED] is currently the owner of 5 properties in the United States. She states that [REDACTED] financial situation will place the applicant in direct danger of being kidnapped if she remains indefinitely in Colombia. She states that this situation could lead to the applicant's death. She states that the applicant has paid for her crime and successfully finished her probation. She states that this is the applicant's only arrest and only unfavorable factor.

[REDACTED], in his letter accompanying the Form I-212, states that he began dating the applicant in April 2001. He states that he cannot imagine his life without his wife and daughter. He states that his decision to marry the applicant was for the sole purpose of starting a family together. He states that the thought of losing the applicant terrifies him and he has not been able to sleep at night. He states that he has difficulty concentrating and is always anxious and nervous. He states that he cannot join the applicant in Colombia because he does not speak Spanish, his business and job are in the United

States and he owns property in the United States. He states that he also has an ill mother for whom he cares.

The applicant, in a letter accompanying the Form I-360, states that, when she joined [REDACTED] in the United States he became a different person and he put off his marriage to her, despite her concerns for violating her immigration status. She states that he was critical of her, limited her movements and was jealous of her interaction with his friends. She states that [REDACTED] constantly questioned her love for him and cut-off contact with her when she went to visit a family friend in Miami, Florida in March 1997. She states that [REDACTED] refused to let her into their shared residence and she therefore moved to New York and obtained employment there to support herself. She states that she and [REDACTED] began to talk again in April 2000, but that the same problems arose and they again separated in May 2000. She states that she has been diagnosed with post-traumatic stress disorder and depression as a result of the relationship.

A psychoemotional assessment written by [REDACTED], a clinical psychopathologist, states that the applicant appeared in his office on two occasions and reported that she suffers a cluster of psychological symptoms of persistent emotional distress with anxiety and depressed mood, which emerged after a highly conflictive relationship with [REDACTED]. He states that the applicant was subjected to interpersonal disputes, episodes of emotional abuse, manipulation and unjustified jealousy and harassment, which resulted in the distancing of the couple. [REDACTED] concluded that the applicant suffers a clinically significant post-traumatic condition derived from her involvement with a highly conflictive relationship in which she was emotionally abused, manipulated and then recurrently ignored. He states that the applicant presents signs of a post-traumatic symptomatology concomitant with mixed anxious-phobic and anxious-depressive reactions of moderate magnitude. He states that the applicant's self-image and esteem, social interactiveness and life dynamics have been affected by her history and that an eventual removal from the United States will be emotionally unbearable. He states that the applicant is in prompt need of continued psychotherapy. In that Dr. [REDACTED] findings appear to be based on two interviews with the applicant, 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 counsel provided no evidence that the applicant continues to require treatment for depression or that she has received treatment at any point prior to or since [REDACTED] diagnosis.

A second psychoemotional assessment written by [REDACTED], states that [REDACTED] appeared in his office on one occasion and reported that he had experienced a number of emotional and somatic symptoms associated with the applicant's immigration status. He states that he has lost his hair, gained weight, has difficulty sleeping, palpitations, frequent headaches and restlessness. He states that, given the state of chaos in Colombia, [REDACTED] fears for the applicant and the safety of their child in a country in which kidnapping is a daily occurrence. He states that [REDACTED] mother suffers from diabetes and motion limitations and his brother is disabled and unable to work. He states that [REDACTED] feels that he cannot leave his family in the United States. [REDACTED] concludes that [REDACTED] is undergoing a major emotional distress derived from the potential removal of the applicant to Colombia and his child's accompaniment of the applicant to Colombia, and being confronted with the alternate option of leaving his elderly mother, disabled brother and business in the United States. He states that [REDACTED] presents with an adjustment disorder symptomatology

featuring mixed anxious-phobic and anxious-depressive reactions of significant magnitude and the prospect of more intense emotional disorganization if the emotional hardship is accentuated by the applicant's removal. He states that [REDACTED] self-esteem and self-image, his social interactiveness, family and work dynamics have been dramatically affected by these events. He states that [REDACTED] remains extremely concerned about a possible disruption of his cherished marital and father-daughter relationships. In that [REDACTED]' findings appear to be based on a single interview with Mr.

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 counsel provided no evidence that [REDACTED] continues to require treatment for depression or that he has received treatment at any point prior to or since [REDACTED] diagnosis. Additionally, while [REDACTED] reported to [REDACTED] that his mother and brother suffer from medical conditions, there is no evidence to establish these claims. Finally, while [REDACTED] reported to [REDACTED] that his wife and child would be subject to the threat of kidnappings, there is no evidence to establish these claims. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Letters of recommendation from the Michael U.S.A. Foundation and All Nations Lion Club, state that the applicant has volunteered with these organizations and helped in raising donations.<sup>1</sup> A letter of recommendation from the applicant's friend, [REDACTED] indicates that the applicant cares for her daughter on occasion. She states that the applicant is professional, ethical, reliable, respectful, understanding and passionate about what she does.<sup>2</sup> A letter from the director of Peoples Day Care, indicates that the applicant's child has been attending the school for three years and that the applicant is the child's primary caregiver.

Letters from the applicant's probation officer indicate that the applicant has served and completed her supervised probation without incident.

The record reflects that the applicant was convicted of bribery of officials in an attempt to obtain documentation that would permit her to remain in the United States, specifically a stamp reflecting that she had been admitted to the United States as a lawful permanent resident.

The record reflects that the applicant has been employed in the United States from 1997 until at least 2002. The applicant has never been issued employment authorization. The record reflects that Mr. [REDACTED] and the applicant filed joint federal taxes from 2002 through 2004.

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:

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<sup>1</sup> The AAO notes that both of these letters have the same return address, which is a residence in New York, and that they contain multiple grammatical and spelling mistakes, indicating that these letters are neither authentic nor official letters from legitimate charitable foundations.

<sup>2</sup> The AAO notes that this letter appears to be written by a relative of [REDACTED] since the name of child for whom the applicant has provided care is [REDACTED].

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 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, her U.S. citizen daughter, the general hardship to the applicant and her family if she were denied admission to the United States, her clear background since her 2000 conviction, her filing of joint federal income taxes and the approved immigrant visa petition filed on her behalf. The AAO notes that the applicant's marriage, the birth of her child and the filing of the immigrant visa petition 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 overstay of her nonimmigrant status; her attempt to obtain a lawful permanent resident stamp in order to remain in the United States; her conviction for bribery of public officials; her inadmissibility pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude; her failure to comply with an order of removal; her extended unlawful presence in the United States; and her unauthorized employment in the United States.

The applicant in the instant case has multiple immigration violations and a criminal conviction. 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.