

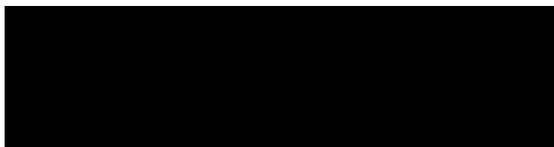
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



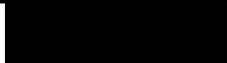
**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



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FILE:



Office: LOS ANGELES, CA

Date: **OCT 20 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: Self-represented

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).

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, 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 Costa Rica who, on March 3, 1997, filed an Application for Asylum and for Withholding of Deportation (Form I-589). On April 10, 1997, the Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings for having entered the United States without inspection on March 7, 1983. On September 12, 1997, the applicant withdrew her application for asylum and the immigration judge granted the applicant voluntary departure until January 12, 1998. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On February 2, 1998, a warrant for the applicant's removal was issued. The applicant filed a motion to reopen with the immigration judge. On February 18, 1998, the immigration judge denied the applicant's motion to reopen. The applicant appealed the denial of the motion to reopen with the Board of Immigration Appeals (BIA). On August 7, 1998, the BIA dismissed the applicant's appeal of the motion to reopen. The applicant filed a petition for review with the Ninth Circuit Court of Appeals (Ninth Circuit). On November 19, 1998, the Ninth Circuit denied the applicant's petition for review.

On February 6, 1999, the applicant married [REDACTED], a lawful permanent resident, in Los Angeles, California. On March 23, 1999, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On October 23, 2000, the Form I-130 was approved. On August 13, 2001, the applicant filed another motion to reopen with the immigration judge. On August 29, 2001, the immigration judge denied the motion to reopen. The applicant filed an appeal of the denial of the motion to reopen with the BIA. On May 31, 2002, the BIA dismissed the applicant's appeal of the motion to reopen. The applicant filed a petition for review with the Ninth Circuit. On November 29, 2002, the Ninth Circuit dismissed the applicant's petition for review.

On June 3, 2003, the applicant filed the Form I-212, indicating that she continued to reside in the United States. 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 now naturalized U.S. citizen spouse and her naturalized U.S. citizen daughter.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated February 28, 2008.

On appeal, the applicant contends that her husband and family count on her for moral support and her grandchildren still require her presence in the United States. *See Applicant's Declaration*. In support of her contentions, the applicant submits the referenced declaration, financial documentation, documentation in regard to prior counsel and hardship documentation. 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, the applicant contends that she has tried to get the correct legal assistance and that, from the beginning, her case was sabotaged when she was referred to a legal assistant who promised to settle her immigration situation. She states that the legal assistant filed her application for asylum without consulting with her or asking any questions. She states that she trusted the legal assistant and did not realize what he was filing for until she arrived at the interview. She states that when she realized what the application was she decided to withdraw her case and went to another attorney named [REDACTED]. She states that her new counsel informed her that it was not necessary for her to return to Costa Rica. She states that counsel again hurt her case by filing another application for asylum which she was told to withdraw before the immigration judge because it had no basis of foundation and it was considered a fraud. She states that counsel continued to file motions to reopen over the next few years and that she now realizes that her case would have been fine if she had married her fiancé and returned to Costa Rica with voluntary departure. She states that this option was never given to her when she asked counsel for alternative options. She states that she eventually withdrew her case from her counsel and took it to a reputable legal center that referred her to [REDACTED]. She states that her new counsel promised to clarify and resolve the immigration situation and hopefully reopen her case for further evaluation. She states that she continued to pay counsel thousands of dollars but nothing was resolved. She states that counsel was reprimanded by immigration for not handling her case well and not following certain requirements required by immigration to resolve her case. She states that she was never given the option to leave voluntarily. She states that the attorneys she hired collected thousands of dollars from her and did nothing to help her immigration status. She states that her attorneys did not mention filing for a pardon or waiver

and did not inform her that she should leave voluntarily to avoid an order of removal. She states that it is the opinion of several attorneys, as well as friends and family that she was taken advantage of because she trusted freely in her attorneys' good intentions towards her case. She states that she is including a copy of the California State Bar attorney complaint form that she recently filed against her attorneys. Affidavits from the applicant's sister and a friend also detail the applicant's claim that she was not provided sufficient legal advice by various attorneys. On appeal, the applicant submits a copy of a State Bar of California attorney complaint form, dated March 17, 2008, against [REDACTED] and [REDACTED] with an attached statement by the applicant.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has failed to meet the requirements of *Lozada*, listed above, in that the record does not reflect that prior counsel has been given an opportunity to respond to the allegations. The AAO notes that the copy of the complaint form reflects that the applicant did not execute the form. Additionally, the record reflects that the applicant has unsuccessfully presented her defense of ineffective assistance of counsel to the immigration court, BIA and Ninth Circuit during motions to reopen, appeals and petitions of review. Furthermore, the record contains an executed declaration by the applicant indicating that she was aware that her prior counsel had insufficient facts and arguments to warrant additional filings, but that she requested counsel to proceed in making those filings. Finally, the record reflects that the applicant was informed that she had been given voluntary departure by the immigration judge at the time of her original hearing.

The record reflects that [REDACTED] is a native and citizen of Costa Rica who became a lawful permanent resident in 1978 and a naturalized U.S. citizen in 1999. The applicant and [REDACTED] do not appear to have any children together. The applicant has a thirty-four-year-old daughter from a prior relationship who is a native of Costa Rica who became a lawful permanent resident in 2002 and a naturalized U.S. citizen in 2008. It appears that [REDACTED] has a daughter, who is at least eighteen-years-old and a U.S. citizen by birth, from a prior relationship. The AAO notes that the record does not contain a birth record for this child, but that this office will consider the child as a positive factor in the applicant's case. The applicant is in her 50s and [REDACTED] is in his 40s.

The applicant, in the declaration accompanying the appeal and the statement accompanying the Form I-212, states that she arrived from Costa Rica on March 7, 1983 and has not returned to Costa Rica since that entry into the United States. She states that she is extremely worried that, after twenty-five years of hard work and dedication, she will be forced to return to Costa Rica where she has no life to go back to. She states that all of her immediate family resides in Los Angeles, including her daughter, husband, stepdaughter and grandchildren. She states that she also has her sister and business partner in the Los Angeles area. She states that her sister has daughters who she has helped to raise. She states that she is a self-employed cosmetologist and that she has served the community for over twenty years. She states that she is an honest hard-working person who helped the community by offering discount prices for haircuts and sometimes for free for low income

families. She states that she has paid taxes and has no criminal record. She states that she takes pride in saying that she loves the United States and would hate to leave her family behind. She states that if she was to return to Costa Rica she and her family would be devastated. She states that she would suffer extreme economic as well as emotional hardship since she does not know anyone in Costa Rica who could help her to find work or a place to live. She states that her livelihood would be greatly affected as she would be unable to earn income as a cosmetologist. She states that she and her whole family are already experiencing emotional hardship. She states that just the thought of being without her family makes her very sad and anxious and that her family has also expressed their sadness and emotional hardship. She states that her intentions were never to overstay or violate any immigration orders but rather to seek the appropriate legal help, as she attempted to do through all these years. She states that her husband and family count on her moral support and her grandchildren are still in need of her. She states that she and her husband love each other like very few couples do. She states that she has a stepdaughter who has lived with them and they form a very harmonious family. She states that they get along well and trust and support each other. She states that she owns and manages her own beauty salon.

[REDACTED], in letters accompanying the Form I-212 and on appeal, states that he and the applicant met and were married in February 1999. He states that he was a single father and provider for his daughter. He states that the applicant unselfishly accepted him and his daughter and took over a mother's responsibility. He states that they have been happily married and have had very much success in their business, relationship and family. He states that they have raised his daughter who is an outstanding high school student and very well-behaved teenager. He states that it would be unbelievably painful for him and his daughter to not have the applicant in their lives. He states that he and the applicant want to grow old together and watch his daughter become even more successful. He states that he is extremely attached to his wife, she is his true love and he cannot imagine or even bear to think about what would be like to be without her. He states that his daughter only sees her biological mother once a month or less and has also become extremely attached to the applicant. He states that the applicant cares for his daughter after school and he does not know how he or his child would manage without the applicant to care for his daughter. He states that he would be unable to afford child care and it would not be the same as a loving parent. He states that the threat of deportation looms over their family like a black cloud. He states that if the applicant left, their house would be empty and would not seem like a home anymore. He states that his daughter would have to go through the experience of losing another "mother."

The applicant's daughter, in an affidavit on appeal, states that her mother's attorney filed an asylum application without her consent or knowledge, which started all her immigration problems. She states that the attorneys her mother hired never really consulted with her on any of their decisions but filed motions and applications that did not help her case. She states her mother spent close to \$20,000 in legal fees. She states that her mother tried to leave the United States but that her attorney at the time told her that she could stay and that he would file the appropriate forms to help her get permission to stay. She states that, due to the legal advice of her attorneys, her mother stayed in the United States even though there was a voluntary departure order. She states that her mother did not intentionally violate the order but simply took the advice of her attorneys. She states that, since her mother arrived in the United States she has always worked in her salon and has paid taxes every year.

The applicant's stepdaughter, in a letter on appeal, states that her parents divorced when she was really young and that the applicant is like a mother to her. She states that, after her father married the applicant, she had a happy family again and two parents instead of one waiting for her. She states that after her father married the applicant, her grades started to get better and that she is now an honor graduate. She states that the applicant has worked hard and is the type of person that everyone should look up to because of all her efforts and education. She states that the applicant has suffered from being unable to see her mother in Costa Rica. She states that the only crime the applicant ever committed was to be trusting because she is so pure hearted. She states that she has already lost a family and does not want to lose one again. She states that her family should be given a chance for complete happiness, to make a woman's dream come true and to keep the family together.

Letters in support of the applicant from friends, family and employers state that the applicant is a sweet, loving, hardworking, responsible, respectful, nice, considerate, honest, dependable, reliable, efficient and law abiding citizen. They state that the applicant has a strong work ethic and has proven to be trustworthy. They state that they have never seen the applicant smoke, drink or use drugs. They state that the applicant has helped raise her nieces and nephews. They state that the applicant would never hurt anyone or violate any laws. They state that the applicant has not been back to Costa Rica since 1983. They state that the applicant's return to Costa Rica would cause her extreme hardship since she has no employment or place to live. They state that the applicant's immediate family resides in Los Angeles. They state that the applicant fills the role of stepmother. They state that the applicant and [REDACTED] have successfully raised his child to be a student with a high GPA, among the top students in the Los Angeles Unified School District. They state that the applicant is a great housewife, who is dedicated and supportive of her husband and stepdaughter. They state that the applicant spends quality time with her family. They state that the applicant is the successful operator/owner of a hair salon. They state that the applicant has an immense reputation at her salon. They state that the applicant has donated her services to the community by offering haircuts to children of low income families. They state that the applicant pays her taxes. They state that the applicant makes time to be a person of faith by attending weekly Sunday church services. They state that it would be devastating to immediate family members and her friends if she were removed from the United States. They state that they have seen the family worry and cry about the applicant's immigration situation. They state that the most recent denial in the applicant's case has really affected the applicant and her immediate family.

The record reflects that the applicant filed joint taxes in 2000 and from 2005 through 2007. The record reflects that the applicant has been employed in the United States since at least 1984. The record reflects that the applicant has never been issued employment authorization. The record does not contain any financial documentation relating to the applicant's salon business.

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 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 a discretionary determination. 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 legal decisions 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 naturalized U.S. citizen adult daughter, her U.S. citizen stepdaughter, the general hardship to the applicant and her family if she were denied admission to the United States, her filing of joint taxes, the absence of a criminal background and the approved immigrant visa petition filed on her behalf. The AAO notes that the applicant's marriage, the official establishment of the stepdaughter relationship, her daughter's adjustment of status to that of a lawful permanent resident and subsequent naturalization 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 illegal entry into the United States; her failure to comply with voluntary departure; her failure to comply with a removal order; her unauthorized employment in the United States; and her 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.