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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:

Office: DALLAS, TX

Date:

SEP 08 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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Dallas, Texas, 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 the United Kingdom, who on September 3, 1998, was admitted to the United States as a nonimmigrant visitor. On March 1, 1999, the applicant married [REDACTED], a U.S. citizen, in Glenwood Springs, Colorado. The applicant remained in the United States past his authorized stay, which expired on March 2, 1999.¹ On March 8, 1999, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on June 29, 1999. On October 20, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. On November 3, 2000, [REDACTED] filed a request to withdraw her support of the Form I-130 due to her separation from the applicant. On December 21, 2000, the Form I-130 was revoked and the Form I-485 was denied on January 19, 2001. On May 11, 2001, the applicant was placed into removal proceedings for having remained at the United States past his authorized stay. On July 24, 2001, the immigration judge ordered the applicant removed *in absentia*.

On January 26, 2005, the applicant appeared at Chicago O'Hare International Airport. The applicant presented his UK passport and U.S. nonimmigrant visa. The applicant was placed into secondary inspection. In a sworn statement, dated January 26, 2005, the applicant admitted that he had previously been admitted to the United States from January 29, 2003 until July 29, 2003, but had remained in the United States until March 2004 without applying for an extension of stay. The applicant admitted that he was aware that he had been placed into immigration proceedings but had, despite receiving appropriate warnings in regard to failure to appear, decided to leave the United States in March 2001. The applicant was found to be inadmissible pursuant to section 212(a)(7)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(B)(i)(II), for being a nonimmigrant without valid documentation. The applicant was permitted to withdraw his application for admission and was returned to the United Kingdom.

On January 26, 2006, the applicant filed the Form I-212, indicating that he resided in the United Kingdom. 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). 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 visit his now lawful permanent resident daughter in the United States.

The district director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The district director determined that the applicant was not eligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years. The district director denied the Form I-212 accordingly. *See District Director's Decision*, dated November 13, 2006.

¹ The AAO notes that the visa which the applicant used to enter the United States in September 1998 was, pursuant to section 222(g) of the Act, rendered void when he overstayed his nonimmigrant status. As such, all of the applicant's subsequent entries were made on a void visa, as well as without the required permission to reapply for admission.

On appeal, counsel contends that the district director erred in finding the applicant inadmissible under section 212(a)(9)(C) of the Act. Counsel contends that the applicant's Form I-212 should be granted in the interest of family reunification. *See Counsel's Letter*, dated December 7, 2006. In support of his contentions, counsel submits the referenced letter and copies of the applicant's passport pages. 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 Attorney General [Secretary] has consented to the alien's reapplying for admission.

The AAO finds that the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act because he has not attempted to or reentered the United States without being admitted since being ordered removed; however, the applicant requires permission to reapply for admission under section 212(a)(9)(A) of the Act.

The record reflects that the applicant's adult daughter is a native and citizen of the United Kingdom who became a lawful conditional resident in 2005 and a lawful permanent resident in 2007. The applicant is no longer married to [REDACTED] and does not appear to have remarried. The applicant is in his 60s and the applicant's daughter is in her 30s.

On appeal, counsel states that the applicant was unaware of his order of removal until he was stopped at the port of entry in 2005. Counsel states that, at the time he was refused admission, the

applicant's daughter was getting married and he was unable to attend the wedding. Counsel states that the applicant is not a bad person and has no criminal record. Counsel states that the applicant is in his mid-60s and his daughter is in the U.S. legally as a permanent resident. Counsel states that the applicant wishes to be able to visit his daughter and her young family. Counsel states that the applicant's Form I-212 should be granted in the interest of family reunification.

The applicant, in a letter accompanying the Form I-212, states that he was aware that he was to appear before the immigration court but that he wrote a letter to the court stating that he did not wish to remain in the United States. He states that he left the United States in March 2001. He states that, because he did not realize the consequences of his failure to appear before the immigration court, he reentered the United States as a visitor on two occasions. He states that, at the time he sought entry into the United States to attend his daughter's wedding, he was refused entry because of the removal order. He states that he left voluntarily to his own and his daughter's dismay. He states that his daughter remains in the United States and he has many good friends in the United States. He states that not being able to attend his daughter's wedding was a painful experience and he greatly desires the legal ability to visit her as often as his resources permit. He states that he cannot wait another five years to be reunited with his daughter and to visit his son-in-law. He states that he has no criminal record and poses no risk to the United States. He states that he simply wants to be with his family.

The applicant's daughter, in a letter accompanying the Form I-212, states that the applicant is one of the most important people in her life. She states that the applicant is honest, responsible, reliable, and has made her the person she is today. She states that being apart from her father is especially hard since they are very close. She states that his absence at her wedding was one of the hardest things she has experienced. She states that, as a newlywed, she and her husband are thinking about starting a family and want her children to get to know her father. She states that her father is aging and she cannot afford to travel to England twice per year. She states that the applicant's ability to come to the United States to visit them would be a God send.

The record contains a National Identification Service Authentic Document, dated November 19, 2005, indicating that the applicant has no criminal record in the United Kingdom.

The record contains recommendation letters stating that the applicant is honorable, honest, trustworthy, the essence of integrity, astute, erudite, upright, respectful and supportive. They state that it has been a pleasure to know the applicant. They state that the applicant would be a great asset to any community in which he resides. They state that the applicant is well educated and speaks several languages and is, as a bilingual person, very sought after as an employee. They state that the applicant is always ready to help others and is very law-abiding. They state that the applicant has an excellent work ethic and does a good job in everything he takes on. They state that the applicant is reputable. They state that the applicant is industrious and conscientious in business with a reputation for fine craftsmanship. They state that the applicant is community minded and involved.

The AAO notes that the recommendation letters described above are written by individuals residing in Texas and indicate that the applicant was employed in some way, shape or form while residing in the United States, despite the applicant's claim that he was never employed in the United States. Furthermore, one of the letters of recommendation indicates that the applicant is an "aspirant permanent resident," establishing that the applicant does not have a nonimmigrant intent but rather

an immigrant intent. The applicant's immigrant intent is also evident in the fact that the applicant remained in the United States for a period of thirteen months from January 2003 until March 2004.

The record reflects that the applicant reentered the United States after he was ordered removed, on November 15, 2001, November 28, 2002 and January 29, 2003. The AAO notes that, even though the applicant presented a nonimmigrant visa or a valid passport in order to enter the United States after March 2001, that documentation was void due to the prior over stay of his nonimmigrant status. While counsel may argue that the applicant was unaware that he had a removal order in the United States, the applicant clearly states that he was aware that he was being placed into immigration proceedings when he left the United States. As such, the applicant was aware that he would be ordered removed if he failed to appear before the immigration judge. Additionally, the record does not contain the letter that the applicant purportedly sent to the immigration court to inform them that he would be leaving the United States.

In *Matter of Tin*, 14 I&N Dec. 371 at 373-374 (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 lawful permanent resident daughter, the general hardship to the applicant and his family if he were denied admission to the United States, and the absence of a criminal background. The AAO notes that the applicant's daughter's adjustment of status to that of lawful permanent resident occurred after the applicant was placed into immigration proceedings. She is, therefore, an "after-acquired equity," to which the AAO accords diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's initial over stay of his nonimmigrant status; his failure to appear for an immigration hearing; his use of a void visa in order to enter the United States on three occasions; and his unlawful presence in the United States from March 2, 1999 until October 20, 1999, from January 19, 2001 until his departure in March 2001, and from July 29, 2003 until March 2004.

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.