

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

SEP 15 2009

[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MD

Date:

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)

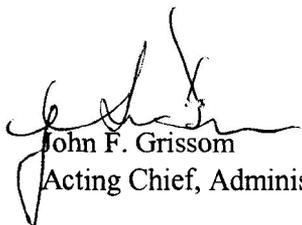
ON BEHALF OF APPLICANT:

[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 District Director, Baltimore, Maryland, 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 El Salvador, who on July 28, 1995, was placed into immigration proceedings for having entered the United States without inspection the day before. On October 12, 1995, the immigration judge granted the applicant voluntary departure until April 12, 1996. 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 May 7, 1996, the applicant married [REDACTED], a lawful permanent resident, in Arlington, Virginia. On September 27, 1996, Mr. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On May 29, 1997, the Form I-130 was denied for failure to appear for an interview.

On June 26, 2000, the applicant married her current spouse, [REDACTED] in Rockville, Maryland.<sup>1</sup> On July 2, 2007, 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 lawful permanent resident spouse, and two U.S. citizen children.

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 April 23, 2009.

On appeal, counsel contends that the district director erred in giving less weight to the equities the applicant acquired after having been ordered removed. Counsel contends that the favorable factors in the applicant's case outweigh the unfavorable factors. See *Counsel's Brief*. In support of his contentions, counsel submits the referenced brief and copies of documentation submitted in response to a request for further evidence.<sup>2</sup> The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) of the Act states in pertinent part:

---

<sup>1</sup> The AAO notes that the record does not contain a divorce record reflecting that the applicant was divorced from Mr. [REDACTED]. The record also does not contain evidence to establish that [REDACTED] has filed a Form I-130 on behalf of the applicant, or that the applicant has another immigrant visa petition that would benefit her. Furthermore, testimony in the applicant and [REDACTED] letters contradict marriage records reflecting that the applicant was married to [REDACTED] at the same time she was being courted by and living with [REDACTED].

<sup>2</sup> The AAO notes that the applicant's response to the request for further evidence was not received by the adjudicating officer in regard to the Form I-212 because counsel forwarded the documentation to an A-file under which the applicant had applied for Temporary Protected Status (TPS). The A-file to which counsel forwarded the documentation had not been consolidated into the applicant's A-file containing the Form I-212 and removal order. The record reflects that the request for further evidence was issued under the applicant's main A-number as reflected on the cover page of this decision and counsel had been instructed to reference that A-number in his response. Counsel failed to reference the appropriate A-number.

(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 district director erred in finding that the applicant's "after-acquired equities" were to be given less weight in exercising discretion. The AAO finds counsel's contentions to be unpersuasive. 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.

The record reflects that [REDACTED] is a native and citizen of El Salvador who became a lawful permanent resident in 2007. The applicant and [REDACTED] have a nine-year-old son and a five-year-old daughter who are both U.S. citizens by birth. While the applicant and counsel contend that the applicant and [REDACTED] have a third U.S. citizen child, the record does not contain any pregnancy records or a birth certificate to establish the existence of this child. The applicant's mother, [REDACTED]

\_\_\_\_\_ is a native and citizen of El Salvador who became a lawful permanent resident in 2002. The applicant and \_\_\_\_\_ are in their 30s and the applicant's mother is in her 70s.

On appeal, counsel states that the applicant is a person of good moral character as evidenced by a letter from the Maryland Department of Public Safety establishing that she does not have a criminal record in Maryland, evidence establishing her volunteer service and donations, and letters from people attesting to her good moral character. Counsel states that the applicant founded a carpentry business with her husband in 2000. Counsel states that the applicant is a business manager and the company employs eight people. Counsel states that it would be difficult for \_\_\_\_\_ to run the business without the applicant. Counsel states that the applicant is a productive member of society. Counsel states that there is a need for the applicant's services in the United States. Counsel states that the applicant has strong family ties in the United States.

The applicant, in letters accompanying the Form I-212 and in response to the request for evidence, states that both she and her husband were employed when they had their first child in 1999. She states that she was employed in a cleaning business at that time. She states that she and her husband bought a second house, which they now rent. She states that, in 2000, she and her husband began working together on a small carpentry business and that this business has grown and is doing well. She states that the company employs eight people. She states that her position is as business manager while her husband oversees all of the carpentry work. She states that she enjoys living in the United States and has never been arrested. She states that she spends time volunteering at the local public school. She states that her entire family lives in the United States and that all six of her siblings live in the United States. She states that her relationship with her husband has been very stable and that they are very supportive of each other and have never been separated since they met in 1996. She states that if she were forced to go back to El Salvador it would be very difficult since she is accustomed to living in the United States. She states that she has resided in the United States for almost 12 years and has spent all of her adult life in the United States. She states that she has six siblings who reside in the United States, two of whom are permanent residents and one of whom is a U.S. citizen. She states that her mother lives in Maryland and has been a lawful permanent resident since 2002. She states that her husband was recently granted permanent residence in March 2007 and he has resided in the United States since 1994. She states that she has two U.S. citizen children. She states that in El Salvador she does not think that she would be able to obtain adequate medical treatment for her children and newborn child. She states that, in El Salvador, they have privatized healthcare and minimal access to public health care and it is almost impossible to get healthcare if you are not able to pay for the services. She states that it is imperative that she has access to these resources with a newborn child. She states that El Salvador is still an incredibly dangerous country which is full of gang violence and she fears going back to her country with young children, especially those who are U.S. citizens because they would be targets for violence, kidnapping or threats. She states that it would be hard for her oldest child to adapt to life in El Salvador since he studies in the United States, speaks English and is a normal American child. She states that it would be very difficult for her husband. She states that they spend time together and they depend on each other and he is her best friend and companion. She states that her husband would be unable to accompany her to El Salvador because his father was killed there and he lived through the worst of the civil war. She states it was difficult for him and he carries some of it with him even now. She states that she cannot imagine her life without her husband.

██████████ in letters accompanying the Form I-212 and in response to the request for evidence, states that if his wife were not able to work for their business it would be very difficult to keep things running smoothly. He states that they have been working together for quite some time and are accustomed to working together. He states that she keeps everything organized and manages the business very well. He states that he first entered the United States in 1994 and is currently employed in construction in Bethesda, Maryland. He stated that his relationship with his wife has been very stable and that they are very supportive of each other. He states that it would be very hard if the applicant is forced to return to El Salvador. He states that all of his children were born in the United States. He states that El Salvador is a very unstable country that is overrun with violence. He states that he recently visited El Salvador in April 2007 and saw firsthand how the country is. He states that many people have bodyguards for protection against gang violence and social unrest. He states that gang violence is a very big problem in El Salvador and he would be frightened if his children were exposed to it. He states that the education level in El Salvador is not as good as what his children would receive in the United States. He states that his children would suffer in El Salvador and he wants to be able to give his children the opportunity of a good education which they can get in the United States. He states that he wants his children to be good members of society and that in El Salvador the chances of that are slim. He states that in the United States opportunities are afforded to everyone. He states that he believes it would be hard to get adequate medical treatment for his children and newborn in El Salvador where they have privatized healthcare with minimal access to public health care. He states it is possible to get healthcare if you are able to pay for the services. He states that it is imperative that the family have access to health care resources because they will have a newborn. He states that it would be very difficult for him if his wife is not permitted to remain in the United States. He states that he and the applicant always spent time together and depend on each other. He states he had a very difficult time living in El Salvador and would be unable to accompany the applicant to El Salvador. He states it would be very difficult if not impossible to find employment in El Salvador. He states that unemployment is very high and people are struggling. He states that he is not prepared to return to El Salvador because he lived through the civil war and his father was killed when he was two-years-old. He states that he thinks that it might be even worse now than during the war in El Salvador because people are armed but without a war to fight in. He states that he could never go back to El Salvador in the condition that it is in now.

The record contains a psychological evaluation, dated May 15, 2007, for the applicant's spouse and children written by ██████████), a licensed psychologist and based on a single interview with the applicant's spouse and children. It states that ██████████ reported that his father was killed when he was young and he resided in El Salvador during the worst of the civil war. ██████████ reported that he came to the United States at the age of 20 and joined several of his brothers who already resided in the United States. ██████████ reported that, in 1996, he experienced a deep depression after one of his brothers returned to El Salvador for which he went to a physician who placed him on Paxil and then later on Fluoxetine. ██████████ reported that, in 2000, he fell into another deep depression for which he turned to religion and the support of his wife. ██████████ reported that he had returned from a week in El Salvador and had to struggle with feelings of sadness and separation from the applicant for even that short period of time. ██████████ reported that he and his wife had both been victims of child sexual abuse growing up in El Salvador and that no actions were taken against the perpetrators. ██████████ reported that he was concerned about the education his children would receive in El Salvador. ██████████ reported that he has experienced an exacerbation of his depressive s ██████████ tomatology since learning that the applicant may be removed from the United States. ██████████ reported that he is having sleep problems,

concentration problems, crying spells, bad dreams and worries. diagnoses [REDACTED] with a Major Depressive Disorder. Recurrent with at least two documented episodes of past depressive episodes. She finds that [REDACTED] is currently functioning at a moderately depressed level with the help of medication, but that his condition would severely worsen if he were faced with separation from the applicant or his children. [REDACTED] also notes that [REDACTED] appears to suffer residual effects of a closed head injury and concussion from a motorcycle accident which further affects his memory and concentration. [REDACTED] finds that, even though the applicant's oldest child does not have sufficient symptomatology for a diagnosis at this point in time, the child does seem to be experiencing more worry, perfectionism, and anxiety than other children his age and should be monitored closely for increased distress if he should be separated from either of his parents. [REDACTED] finds that, even though the applicant's second child carries no diagnosis at present, she demonstrates more separation anxiety symptoms than other children of her age. [REDACTED] concludes that [REDACTED] is being treated with medication which has kept his major symptoms under relative control for the past several years but that it would be a devastating blow to his already tenuous emotional stability if his life was shattered by the removal of the applicant from the United States. She states that the applicant is a strong emotional support as well as a practical one who helps [REDACTED] to compensate for the memory and concentration problems he has suffered since experiencing a closed head injury. [REDACTED] opines that [REDACTED] would go through another major depressive cycle which would be worse than his other experiences as his resilience and support system would be diminished if his wife is removed from the United States. Dr. [REDACTED] also opines that the applicant's two young children, who both already show signs of excessive anxiety, would be severely impacted by the applicant's removal from the United States. She states that the applicant's children are extremely vulnerable to severe separation anxiety difficulties. She states that, in El Salvador, the applicant's oldest child's asthmatic symptoms could also intensify as there are few pollution controls in El Salvador. [REDACTED] recommends that, in addition to medication management, [REDACTED] receive supportive counseling to help him deal with his depressive symptoms and to organize his life to compensate for memory problems. Dr. [REDACTED] recommends that both of the applicant's children should be monitored closely for exacerbation of anxiety symptoms.

The AAO notes that there is no evidence to establish that the applicant's spouse or children have received treatment or counseling since this evaluation, or that they continue to require or receive treatment or counseling. There is no evidence to establish the applicant's spouse's prior major depressive episodes and treatment. There is no evidence to establish the applicant's spouse's head injury and resulting memory and concentration problems. There is no evidence to establish that the applicant's oldest child suffers from asthma or that his symptoms would be exacerbated in El Salvador. In that [REDACTED]'s findings appear to be based on a single interview with the applicant's spouse and children, 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.

Furthermore, the AAO notes that there is no evidence in the record to establish that the applicant's spouse or children would be unable to receive appropriate care or medication in the absence of the applicant or appropriate care or medication in El Salvador. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Without documentary evidence to support the

claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Recommendation letters from friends state that the applicant is a person of good moral character. A clearance letter from the Department of Public Safety and Correctional Services of Maryland, dated March 24, 2006, states and that "[REDACTED]" does not have a criminal history in Maryland. A certificate from Harmony Hills Elementary School indicates that the applicant was recognized for outstanding volunteer service during 2006 to 2007. A slip from the National Children's Center of Value Village Project indicates that the applicant provided a donation of clothing, shoes and toys.

The record reflects that the applicant filed joint taxes from 2003 through 2006. The record reflects that the applicant has been employed in the United States since at least 1999. The record reflects that the applicant has been issued employment authorization from July 12, 2001 until September 9, 2003, August 24, 2005, until September 9, 2006, and November 24, 2007 until September 9, 2010. The record does not contain any financial documentation relating to the applicant's construction business.

The record reflects that the applicant applied for and was granted TPS in 2002 and from 2005 through 2009.

The record reflects that the applicant is inadmissible pursuant to section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), as an alien present in the United States without inspection and is, therefore, ineligible to adjust status. The record does not contain evidence establishing that the applicant would warrant adjustment of status under section 212(i) of the Act.

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.*

As established by the record, the favorable factors in this matter are the applicant's lawful permanent resident spouse, her two U.S. citizen children, her lawful permanent resident mother, the general hardship to the applicant and her family if she were denied admission to the United States, the young age at which she entered the United States, her filing of joint taxes and the absence of a criminal background. The AAO notes that the applicant's marriage, the birth of her children and her mother's adjustment of status to that of a lawful permanent resident 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 an removal order; her inadmissibility under section 212(a)(6)(A) of the Act; her unauthorized employment in the United States except for periods of employment authorization; and her unlawful presence in the United States except for periods of authorized TPS.

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.