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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted]; AND RELATE) Office: LOS ANGELES, CA Date: APR 2 0 2010

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).

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 El Salvador who, on December 4, 1987, was placed into immigration proceedings for having entered the United States without inspection on December 3, 1987. On February 26, 1990, the immigration judge ordered the applicant removed from the United States. On May 24, 1990, the applicant was removed from the United States and returned to El Salvador.

On August 25, 1990, the applicant married his then lawful permanent resident spouse in Los Angeles, California. On July 31, 1992, the applicant's lawful permanent resident spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on August 26, 1992. On July 1, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. The Form I-485 indicates that the applicant last entered the United States without inspection on December 18, 1987. During an interview in regard to the Form I-485, the applicant testified that he last entered the United States without inspection on October 13, 1991. On October 4, 2002, the Form I-485 was denied. On July October 29, 2003, the applicant filed the Form I-212, indicating that he continued to reside in the United States. On April 20, 2004, a motion to reopen the Form I-485 was granted. On August 11, 2009, the Form I-485 was again denied. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of 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 reside in the United States with his now naturalized U.S. citizen spouse and U.S. citizen child.

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 August 8, 2009.

On appeal, counsel contends that the applicant reentered the United States in August 1990.[1] Counsel contends that the applicant's approved Form I-130 granted him status as a legalized beneficiary under the Family Unity Act.[2] Counsel contends that the applicant has been in lawful status since his first employment authorization was issued in 1992, evidencing his desire to respect the immigration

---

[1] The AAO notes that the applicant testified that he reentered the United States on October 31, 1991; however, the record reflects that the applicant was married in the United States on August 25, 1990.

[2] The AAO finds that an approved Form I-130 does not confer legalized status to a beneficiary. An applicant must have filed an Application for Family Unity Benefits (Form I-817) in order to apply for voluntary departure under the Family Unity Act. Furthermore, the Form I-817 must have been approved for the applicant to be granted voluntary departure under the Family Unity Act. Finally, an applicant must have filed and had a Form I-817 approved for each two year period the applicant remained in the United States. While the record reflects that the applicant was granted employment authorization from December 21, 1991 until June 30, 1992, and from December 27, 1993 until December 31, 1994, these applications were granted under Temporary Protected Status (TPS) and the applicant has never filed a Form I-817. The AAO also notes that the applicant did not file an Application for Temporary Protected Status (TPS) (Form I-821) in conjunction with the employment authorization applications and, therefore, was not in the United States subject to an authorized stay.

laws of the United States.[3] Counsel contends that the applicant has continued to renew his employment authorization since 1992.[4] Counsel contends that the field office director's simple conclusory statement that the equities have been balanced is woefully inadequate and amounts to abuse of discretion. Counsel contends that the applicant's Form I-212 should be granted. *See Counsel's Brief,* dated September 8, 2009. In support of these contentions, counsel submits the referenced brief, an employment letter and copies of a country condition report. 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 of an 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.

---

[3] The AAO finds counsel's contention unpersuasive. As discussed above, the applicant was not in an authorized stay in the United States.

[4] The AAO finds counsel's contention unpersuasive. As discussed above, the applicant was issued employment authorization from December 21, 1991 until June 30, 1992, and from December 27, 1993 until December 31, 1994. The applicant has only received employment authorization for these dates and from July 14, 1998 until July 13, 1999, and December 13, 1999 until December 12, 2000.

The record reflects that, on August 25, 1990, the applicant married [redacted] in Los Angeles, California. [redacted] is a native of El Salvador who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 2006. The applicant and [redacted] have a seventeen-year-old daughter who is a U.S. citizen by birth. The applicant and [redacted] are in their 40's.

On appeal, counsel states that, while the applicant is not the beneficiary of an approved Petition for Immigrant Worker (Form I-140), he does perform essential services to his church and, more importantly, provides essential support to his family in the United States. Counsel states that the applicant does not dispute that he was aware of his removal. Counsel states that the applicant has a U.S. citizen spouse to whom he has been married more than nineteen years. Counsel states that the couple has a sixteen-year-old daughter with whom the applicant has an extremely close bond. Counsel states that, given that the applicant will return to El Salvador, a country still suffering from the effects of a long civil war, which prompted his prior entries into the United States, the applicant's family will not accompany him. Counsel states that the applicant does not have a criminal record and has been an asset to his community through his years of volunteer service to his church.[5] Counsel states that the applicant has been gainfully employed and has been paying employment taxes in the United States. Counsel contends that the needs of the applicant's spouse and child balance just as favorably against his immigration violations.

The applicant, in a letter accompanying the Form I-212, states that if he is removed from the United States it will be an extreme hardship to him and his family. He states that he married [redacted] in August 1990 and that, during this time, he has been working to support his family. He states that, after more than ten years of living in the United States, returning to El Salvador will be like restarting his life and forcefully facing an environment which will only bring hardship into every aspect of his life. He states that he will not have a secure job or a home.

[redacted], in a declaration attached to the Form I-212, states that she has been married to the applicant for thirteen years and they have a ten-year-old daughter who was born in the United States. She states that her daughter is attending elementary school in Los Angeles, California. She states that, even though she is employed, the applicant's earnings constitute the primary source of income for the family. She states that she and her daughter would be unable to survive without the applicant's support. She states that her constant agonizing fear is that the applicant will not be able to stay in the United States. She states that, if the applicant is forced to return to El Salvador, she knows that she will not be able to bear the separation. She states that she cannot imagine her daughter growing up without her father. She states that the thought of following the applicant to El Salvador frightens her because her daughter would be denied the educational and medical benefits that are accessible in the United States. She states that, due to poor socio-economic conditions in El Salvador, she and her daughter would face discrimination and even violence.

The applicant's daughter, in a declaration on appeal, states that she is sixteen-years-old and about to begin her junior year in high school. She states that she has no siblings and, therefore, has an extremely close relationship with her parents, who dote on her. She states that the bond she shares with the applicant is particularly strong. She states that her father has always been supportive of her dream to be a veterinarian. She states that the applicant works hard to provide for her every need so

[5] The AAO notes that the exhibit to which counsel refers establishes that the applicant has been employed by the church and did not volunteer his services.

that she can focus solely on her education, which he has told her is his priority. She states that neither of her parents went to college because they had to work to support their families and the political and social climate in El Salvador did not value a university education. She states that this is a very big factor in the decision that, if her father cannot remain in the United States, she and her mother will not accompany him to El Salvador. She states that her dream of becoming a vet is an impossible one for her, should she relocate to El Salvador. She states that she cannot relocate to El Salvador because she only speaks conversational Spanish. She states that she does not read or write Spanish and would not be able to succeed in school in El Salvador due to her poor fluency. She states that she also has several medical issues that are of concern that would prevent her from living in El Salvador. She states that she had two operations due to chronic ear infections. She states that she still seems to have an inordinate amount of ear infections and her parents are concerned about the quality of medical care in El Salvador. She states that she cannot imagine her life without her father in it. She states that he is her confidant and someone she trusts. She states that, if the applicant is not permitted to remain in the United States her life will be in shambles. She states that, if her father leaves, without his financial contribution there will be no money for anything extra in life. She states that, when she turned sixteen, her father was the one who paid for her driver's education class. She states that, if it were not for her father, she would not have had the opportunity to get her driver's license. She states that, without her father, she, like her parents, will not have the opportunity to go to college because she will have to work to provide the opportunities that her father now provides. She states that she knows that the employment situation in El Salvador is quite bad because her father sends money to his siblings. She states that, because her father will not find work, he will be unable to help her and her mother.

A letter from [redacted] dated November 4, 2004, states that the applicant has been working for the office since May, delivering documents and cleaning the office on a part time basis. He states that the applicant is a good worker.

A letter from [redacted]s, dated September 14, 2001, states that the applicant has been employed by his company since May 1996.

An undated letter from [redacted], states that the applicant has been employed in the Department of Maintenance from 1993 "up to date." She states that the applicant is a very responsible worker and she recommends him as an honorable man and person of good moral character.

A letter from [redacted], dated September 18, 2001, indicates that [redacted] is employed by her and receives a net pay of $320 bimonthly. She states that [redacted] is an exemplary employee and human being. She states that she can give nothing but the highest praise and recommendation of and the applicant.

The AAO notes that there is no evidence in the record to establish that the applicant's daughter has had two operations on her ears or continues to be treated for excessive ear infections. There is no evidence to establish that the applicant's daughter would be unable to receive appropriate treatment in the applicant's absence or if she accompanied him to 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)).

The record reflects that the applicant has been employed in the United States since February 1985.[6] The record reflects that the applicant was issued employment authorization from December 21, 1991 until June 30, 1992; from December 27, 1993 until December 31, 1994; from July 14, 1998 until July 13, 1999; and from December 13, 1999 until December 12, 2000. The record reflects that the applicant has filed joint taxes from 1997 through 1998 and 2000 through 2003.

The country condition report in the record does not indicate that the applicant will be unable to find any employment in El Salvador, or that the applicant's spouse and daughter would suffer discrimination in El Salvador. The country condition report in the record does not indicate that the applicant's daughter would be unable to attend college in El Salvador. Going on record without supporting documentary evidence is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, Supra.; Matter of Treasure Craft of California, Supra.*

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

---

[6] The applicant's Form G-325A, which he signed on May 28, 1998, shows employment with [redacted] as a manager since February 1985.

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 naturalized U.S. citizen spouse, his U.S. citizen daughter, the general hardship to the applicant and his family if he were denied admission to the United States, his filing of federal taxes, his lack of a criminal background and the approved immigrant visa petition filed on his behalf. The AAO notes that the applicant's spouse's adjustment of status to that of a lawful permanent resident, the birth of the applicant's daughter and the filing of the immigrant visa petition benefiting him 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 unlawful entry into the United States; his illegal reentry into the United States after having been removed; his unauthorized and unlawful presence in the United States; and his unauthorized employment in the United States, except for periods during which he was granted employment authorization.

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.