

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

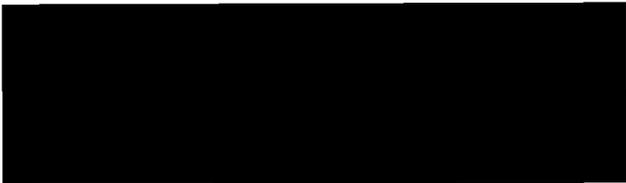
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H4



FILE:



Office: CLEVELAND, OH

Date: APR 27 2010

RELATES)

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Cleveland, Ohio, 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 record reflects that the applicant is a native of Kuwait and citizen of Jordan who, on November 1, 1987, was admitted to the United States as a nonimmigrant student. On September 14, 1990, the applicant was convicted of carrying a concealed weapon in violation of section 2923.12 of the Ohio Revised Codes (ORC) and was fined. On October 28, 1992, immigration officers apprehended the applicant while he was engaged in unauthorized employment. On the same day, the applicant was placed into immigration proceedings. On June 25, 1993, the immigration judge denied the applicant's applications for asylum and withholding of removal and granted him voluntary departure until December 31, 1993. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On March 23, 1995, the applicant departed the United States and returned to Jordan.<sup>1</sup> On November 14, 1996, the BIA found that the applicant had departed the United States during deportation proceedings, which constituted a withdrawal of the appeal. The BIA held that the initial decision of the immigration judge was final to the same extent that no appeal was taken. As such, the applicant failed to comply with voluntary departure, thereby changing the voluntary departure to a final order of removal.

On August 25, 1997, the applicant filed a Form I-212, indicating that he resided in Kuwait. On October 7, 1997, the applicant was admitted to the United States as a lawful permanent resident based on an approved Petition for Alien Relative (Form I-130) filed on his behalf by his naturalized U.S. citizen father. On October 6, 1998, the Form I-212 was denied for abandonment. On December 1, 2005, deportation and removal officers apprehended the applicant and determined that the applicant had failed to inform the U.S. Consulate of his prior removal and criminal conviction at the time he sought his immigrant visa. On the same day, the applicant was placed into immigration proceedings under section 237(a)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1226(a)(1). On April 6, 2007, [REDACTED] filed an Immigrant Petition for Alien Worker (Form I-140) on the applicant's behalf, which was denied on September 22, 2008. On March 12, 2009, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601), which remains pending. On March 18, 2009, the immigration judge ordered the applicant removed from the United States *in absentia*. On March 31, 2009, a motion to reopen proceedings was granted. On April 8, 2009, the applicant filed the Form I-212, indicating that he resided in the United States. On October 26, 2009, the applicant pled guilty to and was convicted of two counts of assault in violation of section 2903.13(A) of the ORC. The applicant was sentenced to six months in jail per count, which was suspended, and 36 months of probation. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant seeks a waiver 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 lawful permanent resident mother, naturalized U.S. citizen brother and five lawful permanent resident siblings.

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 December 14, 2009.<sup>2</sup>

<sup>1</sup> A Record of Verification (Form G-146) confirms the applicant's departure from the United States on this date.

<sup>2</sup> The AAO notes that the field office director referenced the applicant's eligibility for waivers under section 237(a)(1)(H) and 212(k) of the Act. The AAO finds that eligibility for a waiver under section 237(a)(1)(H) of the Act

On appeal, counsel contends that the field office director made a number of significant errors with respect to the decision due to incomplete information, incorrect assumptions of fact and law and inappropriate conjecture. *See Counsel's Brief*, undated. In support of her contentions, counsel submits the referenced brief, copies of medical documentation, financial information, criminal records documentation and copies of documentation already in the record.

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.

On appeal, counsel contends that the applicant did not make a willful misrepresentation of a material fact in obtaining his lawful permanent resident status. Counsel points to the immigration judge's finding, on January 14, 2008, that U.S. Immigration and Customs Enforcement (USICE) failed to

---

lies with the immigration court. The AAO also finds that the applicant is not eligible for a waiver under section 212(k) of the Act because he was aware of and a reasonable inquiry would have revealed his inadmissibility. The AAO finds that the only application before this office is whether the applicant warrants a favorable exercise of discretion and permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

meet the burden to establish the first charge of removability (under 212(a)(6)(C)(i) of the Act) with clear and convincing evidence. The AAO notes that the burden in removal proceedings lies with USICE, while the burden of proof in seeking admission or other immigration benefits lies with the applicant. *See Section 291 of the Act, 8 U.S.C. § 1361*. Furthermore, the AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO notes that the immigration judge commented that the applicant had probably made a material misrepresentation, but that the evidence did not meet the standard of clear and convincing.

Counsel contends that the applicant did not understand his immigration proceedings and what his attorney was doing on his behalf. Counsel contends that the applicant's family was unaware that the applicant had married his spouse at the time he applied for the immigrant visa. Counsel contends that the applicant's brother, [REDACTED] prepared the applicant's immigrant visa applications without assistance from the attorney and while under emotional duress due to his father's health and his own divorce proceedings. Counsel contends that the applicant's brother did not know or understand the issue with the applicant's removal proceedings. Counsel contends that the applicant never read any of the documentation [REDACTED] sent to him and was subjected to only a five minute interview with the consular officer at the time the immigrant visa was issued. Counsel contends that the applicant was only asked to present his passport at the interview and the officer only asked him his name and to sign the Form DS-230. Counsel contends that the consular officer did not permit the applicant to review the Form DS-230 before he signed it. Counsel contends that the USICE officer and the applicant testified before the immigration judge that the applicant was clueless as to his own immigration case and how the immigration process worked. Counsel contends that, at the time of his admission, the applicant believed that all of his immigration issues had been resolved.

The applicant's brother, in his affidavit, dated February 11, 2010, states that the applicant took voluntary departure on the advice of counsel and that the family believed that counsel was working to straighten out the applicant's immigration issues. He states that the applicant's family thought it would be best for the applicant to return home and wait for the immigrant visa and did not understand that an appeal had been filed. He states that the applicant was angry at the family when he returned home in 1995 and refused to speak to anyone. He states that counsel did not inform him that there was a problem with the applicant's departure from the United States. He states that he decided to prepare the immigrant visa application on behalf of the applicant without counsel's assistance. He states that he was experiencing some issues while preparing the forms, such as his father's open-heart surgery; his divorce; providing for his children; trying to finish school; trying to keep the family business running; and the applicant's refusal to speak with him. He states that, when he completed the forms, he believed that the applicant's removal case had been resolved and that there were no issues and he was unaware that the applicant had married. He states that, even though he had informed counsel that he was personally preparing the visa application, counsel sent him a form (Form I-212) stating that she required the applicant's signature. He states that he signed the form on the applicant's behalf and returned it to counsel. He states that he did not know, at the time, what was the purpose of the form.

Counsel and [REDACTED] appear to contend that the applicant's counsel failed to inform the applicant and his

family of the consequences of his departure from the United States and what was happening with his immigration process. 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). A letter from the applicant's counsel indicating that the office is unable to assist him in obtaining U.S. citizenship has no bearing as to the required elements for establishing ineffective assistance of counsel. Counsel has failed to provide any of the required evidence to establish that the misrepresentation was made due to the ineffective assistance of counsel.

While the immigration judge's finding indicates that the applicant testified that he did not sign either the Form I-212 or the Form DS-230, counsel now states that the applicant did sign the Form DS-230 and the signature on the Form DS-230 matches the applicant's signature. While the immigration judge's finding indicates that the applicant testified that counsel prepared the Form I-212 and Form DS-230, counsel now states that [REDACTED] prepared the Form DS-230 on the applicant's behalf and the Form DS-230 indicates that the applicant received no assistance from counsel or a relative in preparing it. While [REDACTED] contends that he prepared the Form DS-230 on behalf of the applicant and also signed the Form I-212 on his behalf, the hand-writing on the Form I-212 and Form DS-230 matches a change of address form (EOIR-33) completed and submitted by the applicant on June 9, 2008. While counsel contends that the applicant's family was unaware that the applicant had been removed from the United States, the record reflects that the family and the applicant were issued a G-146 indicating that he had self-deported from the United States. Additionally, the BIA's decision made it clear that the applicant had failed to comply with voluntary departure and a copy of the decision was forwarded to the family's address. While counsel contends that the applicant did not review the documentation and was not aware of his immigration issues, the record reflects that the applicant is, and was at the time, fluent in both spoken and written English and had completed and signed a G-146 indicating that he had self-deported from the United States.

In light of all the evidence before it, the AAO finds that the applicant made a willful misrepresentation in applying for his immigrant visa and is, therefore, inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. An applicant may seek a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The record reflects that, on June 2, 1995, the applicant married his spouse in Jordan. The record does not reflect that the applicant's spouse has any legal status in the United States. The applicant and his spouse have four children who do not have any legal status in the United States. The applicant's father is a native of Jordan who became a lawful permanent resident in 1991 and a naturalized U.S. citizen in 1997. The record reflects that the applicant's father is now deceased. The applicant's mother is a native and citizen of Jordan who became a lawful permanent resident in 1998.<sup>3</sup> The applicant's brother is a native of Kuwait who became a lawful permanent resident in 1986 and a

---

<sup>3</sup> [REDACTED] states, in his affidavit, that his mother became a lawful permanent resident in 1991; however, U.S. Citizenship and Immigration Services (USCIS) records reflect that she did not become a lawful permanent resident until 1998.

naturalized U.S. citizen in 1990. The applicant has five other siblings who are citizens of Jordan who became lawful permanent residents in 1997, 1999 and 2008.<sup>4</sup> The applicant is in his 40's, his mother is in her 60's and his siblings are all adults.

Counsel states that the applicant took on the responsibility of caring for his mother after his father passed away in 1999. He states that the applicant has run the family store for the past thirteen years, which is a vital part of a poor neighborhood. He states that the applicant has acquired property, invested in other businesses, gone back to school and obtained a college degree, made financial and other contributions to the community, donated to the police, supported his mother and helped other members of his immediate family. He states that, even though the applicant has some criminal offenses, these offenses are minor and his history does not indicate that he has been a repeat offender of the same type of crime. He states that that 1990 and 2003 charges are related to the store and the 2009 charges are directly related to his mental breakdown.<sup>5</sup> He states that these incidents do not reflect that the applicant is a person of bad moral character or that moral character does not require moral excellence. Counsel contends that the applicant's history is more compelling than recent decisions issued by the AAO.

in his affidavit, states that, towards the end of 1989, his father, he and his brothers opened a grocery store that is now . He states that, after the applicant returned to the United States in 1997 he took over the family business. He states that he could not take care of the family business because he had to care for his own family. He states that none of their siblings could handle the business either. He states that, after the applicant's father passed away in 1999 the applicant took over the responsibility of caring for his mother. He states that, from 1997 until 2005, the applicant developed himself as a businessman and established himself in the community. He states that the applicant traveled between the United States and Jordan for business and to spend time with his family. He states that the applicant desperately wanted to bring his wife and children to the United States because the rest of his family resided in the United States. He states that his mother became very worried and upset about the applicant's immigration issues. He states that the applicant failed to appear at his immigration hearing in 2009 because he was detained for speeding and was detained by USICE. He states that the applicant spent a month in detention and he believes that, during this arrest, the applicant had a mental breakdown. He states that the applicant was beaten by individuals with whom he had been incarcerated. He states that the applicant did not sound like himself and became paranoid. He states that the applicant had trouble understanding things that were told to him. He states that the applicant was arrested in April 2009 after he had an episode on the street. He states that he had the applicant hospitalized after he was released from custody. He states that the applicant was diagnosed with bipolar disorder and the hospital wanted to keep him for treatment. He states

---

<sup>4</sup> The AAO notes that one of the applicant's siblings was admitted as a lawful permanent resident in 1997 and was placed into removal proceedings in 2004 for having been convicted of a crime involving moral turpitude. The applicant's sibling was subsequently granted relief in immigration court and readmitted as a lawful permanent resident in 2005. The AAO notes that the applicant has another sibling who was admitted as a lawful permanent resident in 2000, but that she was stripped of her residency and ordered removed from the United States in 2009.

<sup>5</sup> The AAO notes that, in 1990, the applicant was also charged with receiving stolen property; in 2002, the applicant was charged with illegal distribution of a tobacco product; in 2003, the applicant was charged with criminal simulation; and in 2009, the applicant was charged with felony assault, fleeing to elude police officer, recklessly endangering, unauthorized use of vehicle and resisting arrest; but that these charges were either not prosecuted or dismissed or reduced as part of a plea agreement.

that the applicant did not want to stay in the hospital and he was released with instructions to follow up for treatment and medicine to get his disorder under control. He states that the applicant is struggling to understand and get his disorder under control. He states that the family is trying to help the applicant cope with his disorder, while worrying about what is going to happen to him because he cannot care for himself. He states that the applicant has been residing with him and his family. He states that the family has pulled together to care for the applicant, their mother and the applicant's businesses. He states that the family understands that, with treatment and the family's support, the applicant will be able to get the disease under control and live a normal life.

The applicant's friends and customers, in letters, state that the applicant is a good man and friend, the best father, an excellent businessman, a caring man and a nice person. They state that the applicant has a good heart, a beautiful personality and a good sense of humor. They state that the applicant has been very generous, is protective, and is an inspiration, mentor, role model and a father figure. They state that the applicant tries to help people in need, tells children to stay in school and treats people with respect. They state that the applicant cares about the community and has had a great impact on the community. They state that they love the applicant and his family and that the applicant is a family man who cares about his family. They state that the applicant is kind, fair, caring, outgoing, dependable and loving. They state that the applicant hires people who are in need. The AAO notes that the majority of the letters indicate that the applicant requested the letters to enable him to reunite with his children.

Letters from suppliers and representatives providing services/goods to the applicant's store, state that the applicant is an excellent customer who works hard and is well known in the neighborhood. They state that the applicant is a good businessman who treats people with respect and is a productive part of the community.

A letter from the applicant's niece states that the applicant and his brothers helped her family when her father had a stroke. She states that the applicant took her and her family to New York and that they stayed in his house when they went to Jordan. She states that the applicant is a nice and good man. She states that the applicant is very good with people, he helps people and that he is loved by all the people.

Documentation in the record establishes that the applicant was awarded a Diploma of Hotel/Restaurant Management from Harcourt Learning Direct in 2000. Documentation in the record establishes that the applicant was awarded an Associate of Applied Science, Information Technology-Mainframe Programming, by Cuyahoga Community College in 2008.

A Certificate of Appreciation was issued to M&C Grocery in recognition of valuable contribution to NewBirth Development Corporation 2006 Family Festival & Fireworks in 2006.

The record contains a copy of a membership card in the applicant's name for the Cleveland Police Patrolmen's Association for 2009.

A letter from [REDACTED] dated May 16, 2006, indicates that the applicant was employed by the [REDACTED] in Amman, Jordan, from March 23, 1995 until September 30, 1997. A letter from [REDACTED], dated May 26, 2006, indicates that the applicant was employed by [REDACTED] in Cleveland, Ohio, from March 1, 1992, until March 22, 1995, and from October 1, 1998, until

September 30, 2001. A letter from [REDACTED] dated May 16, 2006, indicates that the applicant was employed by [REDACTED] in Amman, Jordan, from October 1, 2001, until January 15, 2003. A letter from [REDACTED] dated May 16, 2006, indicates that the applicant was employed by [REDACTED] in Amman, Jordan, from October 25, 2003, until August 15, 2004. Documentation in the record establishes that, after the applicant obtained his immigrant visa in 1997, he continued to return to Jordan for 6 month periods, during which time he visited his wife and children and was employed in Jordan.

Documentation in the record establishes that the applicant has been employed in the United States from 1987 until 1995 and from 1997 until present. Documentation in the record reflects that the applicant is the owner [REDACTED]

A letter from [REDACTED] dated March 2, 2010, indicates that the applicant has been a client of his since 1990. He states that the applicant is the owner of [REDACTED] and he has been self-employed for over 20 years.

The record contains evidence establishing that the applicant has filed individual federal taxes from 1997 through 2001, in 2004 and in 2006. This evidence indicates that the applicant claimed that he was single and he did not claim anyone as a dependent.

The record contains evidence establishing that the applicant's business has filed federal taxes from 1999 through 2003 and 2005 through 2008.

The record reflects that the applicant was issued employment authorization from February 19, 1993, until February 18, 1994 and February 19, 1995, until February 18, 1996. Since an alien who acquired permanent resident status through fraud or misrepresentation has never been "lawfully admitted for permanent residence" and has not made a lawful entry, the applicant's presence and employment in the United States since 1997 is unlawful, unauthorized and ongoing. *See Matter of T\_*, 6 I&N Dec. 136 (BIA, A.G. 1954); *Matter of Wong*, 14 I&N Dec. 12 (BIA 1972); *Monet v. INS*, 791 F.2d 752 (9<sup>th</sup> Cir. 1986); *Matter of Longstaff*, 716 F.2d 1439 (5<sup>th</sup> Cir. 1983); *Biggs v. INS*, 55 F.3d 1398 (9<sup>th</sup> Cir. 1995); *In re Koloamatangi*, 23 I&N Dec. 548 (BIA 2003).

A letter from [REDACTED] and [REDACTED] at Northcoast Behavioral Healthcare, dated May 15, 2009, indicates that the applicant has been an in-patient for the evaluation and stabilization of emotional disorders. The record contains documentation establishing that the applicant was hospitalized at Lakewood Hospital from May 5, 2009, until May 22, 2009, as a judicial commitment. The aftercare plan indicates that the applicant resides in his own home and alone. The aftercare plan indicates that the applicant was admitted for grossly impaired judgment, behavior or capacity to recognize reality and inability to meet life demands. The aftercare plan indicates that the applicant was diagnosed with bipolar disorder and was prescribed depakote, centrum and trazadone. The aftercare plan indicates that the applicant was scheduled for a follow up and was advised to continue his medication and check depakote levels every 2 months. The records indicate that the applicant was stable at the time of his release. The AAO notes that there is no evidence to establish that the applicant has received treatment or counseling since this hospitalization, or that he continues to require or receive treatment or counseling. 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)).

Documentation in the record establishes that, at the time the applicant was apprehended by immigration officers in 1992, he stated that he was married “in the Muslim way” to [REDACTED] a U.S. citizen, in April 1989. The applicant has since made no further mention of [REDACTED] and has not claimed her as a prior spouse on any applications/petitions. See *Record of Sworn Statement in Affidavit Form*, dated October 28, 1992.

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 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 a discretionary determination. 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 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 mother, his naturalized U.S. citizen brother, his five lawful permanent resident siblings, the general hardship to the applicant and his family if he were denied admission to the United States, and his payment of federal taxes. The AAO notes that the applicant’s five siblings’ and mother’s adjustments of status to that of lawful permanent residents occurred after the applicant was placed into immigration proceedings. They are, therefore, “after-acquired equities,” to which the AAO accords diminished weight. Moreover, the record fails to establish that the applicant is the beneficiary of any immigrant or nonimmigrant visa petition that would currently offer him a means of acquiring lawful residence in the United States.

The AAO finds that the unfavorable factors in this case include the applicant’s violation of his nonimmigrant student status; his conviction for carrying a concealed weapon; his failure to comply with voluntary departure; his concealment of his conviction in and removal from the United States, as well as his marital status, in seeking an immigrant visa; his inadmissibility under section 212(a)(6)(C)(i) of the Act; his continuing false and changing testimony in regard to his prior willful misrepresentations; his convictions for two counts of assault; his unlawful presence in the United States; and his unauthorized employment in the United States, except for periods during which he was issued employment authorization.

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