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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**

H4

[REDACTED]

FILE:

[REDACTED]

Office: SAN ANTONIO, TX

Date: **AUG 26 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, San Antonio, 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 sustained and the application approved.

The applicant is a native and citizen of Honduras whose lawful permanent resident mother, on July 17, 1997, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved. On May 7, 2004, the applicant was placed into immigration proceedings for having entered the United States without inspection on April 3, 2004. On May 18, 2004, the immigration judge ordered the applicant removed from the United States subject to a Stipulated Request for Removal Order and Waiver of Hearing. On June 17, 2004, the applicant was removed from the United States and returned to Honduras.

On May 11, 2009, the applicant filed the Form I-212, indicating that he resided in Honduras. The applicant is inadmissible under 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 lawful permanent resident mother.

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 31, 2009.

On appeal, counsel contends that the field office director's decision was based on insufficient evidence and additional evidence will be submitted. *See Form I-290B*, dated September 29, 2009. In support of his contentions, counsel submits the referenced Form I-290B, letters from the applicant and his mother, employment documentation and letters of recommendation. 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.

On appeal, counsel contends that the applicant's reason for his illegal entry was due to the illness of his mother and the inability of family members in the United States to provide assistance. Counsel contends that the applicant is of good moral character and his mother's illness is among the major factors which should be considered on appeal.

The applicant, in his letter on appeal, states that he recognizes that he made a big mistake when he tried to come to the United States in an illegal way. He states that despair leads people to do the wrong thing and is begging in earnest to be given an opportunity to be in the United States. He states that he wishes to see his mother and to be with her in order to care for her and help her since she is aged and needs him.

The applicant's mother, in her letters on appeal and accompanying the Form I-212, pleads that her son be given the opportunity to enter the United States so that she can see him. She states that she is really sad and has been ill. She states that her blood pressure has been really high since her son's case was denied. She states that she cannot travel due to health issues. She states that her son came to the United States in a desperate state of mind in order to make money to better himself and to help her and his father. She states that the applicant is not a criminal. She states that the applicant is a good son and was only trying to help his family. She states that she is alone and very stressed. She states that she cannot travel due to lack of money.

A letter from [REDACTED], at the International Christian Center, dated September 12, 2009, states that the applicant is a permanent member of the congregation.

A letter from the Law Firm of [REDACTED], dated September 14, 2009, states that the applicant has been employed as a janitor for the firm since January 25, 2003.

Letters of recommendation from friends state that that applicant is a person of good moral character. They state that the applicant is honest and hardworking. They state that the applicant has of limited resources and plans to travel to the United States. They state that the applicant has a good reputation in the community. They state that the applicant had lost his job and had travelled to the United States in desperation. They state that the applicant has been unable to see his brother and sick mother. They state that the applicant does not have a criminal background.

The AAO notes that counsel and the applicant have failed to provide any independent evidence to establish that the applicant's mother has been or is ill. The record does not establish that the applicant's mother is unable to receive appropriate treatment in the absence of the applicant or appropriate treatment in Honduras. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)).

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, the general hardship to the applicant and his family if he were denied admission to the United States, the absence of a criminal record and the approved immigrant visa petition filed on his behalf.

The AAO finds that the negative factors in this matter are the applicant’s original unlawful entry and unlawful presence in the United States prior to removal.

The applicant’s unlawful entry and unlawful presence in the United States cannot be condoned. However, the AAO finds that given all of the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary’s discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

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 established that a favorable exercise of the Secretary’s discretion is warranted. Accordingly, the appeal will be sustained.<sup>1</sup>

**ORDER:** The appeal is sustained and the application approved.

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<sup>1</sup> The AAO notes that, if it is later found that the applicant illegally reentered the United States *at any time* after his 2005 departure, he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, the grant of permission to reapply for admission is automatically revoked and he is ineligible for permission to reapply for admission until he has remained outside the United States for a period of ten years. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).