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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

[REDACTED]

Hy

FILE:

[REDACTED]

Office: NEW YORK ,NY

Date:

DEC 06 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: Self-represented

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 \$630. 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 District Director, New York, New York, 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 Colombia, who, on October 1, 2000, appeared at the Los Angeles International Airport. The applicant presented a Costa Rican passport containing a U.S. nonimmigrant visa bearing the name [REDACTED]. The applicant was placed into secondary inspection. The applicant admitted that he was not the true owner of the document and that he did not have documentation to enter the United States. The applicant admitted that he knew it was illegal to attempt to enter the United States by presenting the document. The applicant originally claimed to be entering the United States in order to find employment and later claimed fear of return to Colombia. On October 19, 2000, the applicant was placed into immigration proceedings. On May 14, 2002, the immigration judge denied the applicant's applications for asylum, withholding of removal and relief under the convention against torture. The immigration judge ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On September 10, 2003, the BIA dismissed the applicant's appeal. The applicant failed to depart the United States.

On September 7, 2006, the applicant married his spouse, [REDACTED] in New York. On December 18, 2006, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was denied on July 2, 2008. On November 27, 2009, the applicant filed a Form I-212, indicating that he resided 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). 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 U.S. citizen spouse, two U.S. citizen children and one U.S. citizen stepchild.

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 March 26, 2010.

On appeal, the applicant contends that the district director failed to weigh all his favorable factors. *See Form I-290B*, dated March 23, 2010. In support of his contentions, the applicant submits the referenced Form I-290B, medical documentation and educational documentation. 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.

The record reflects that [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] have a two-year-old son and a four-year-old daughter who are both U.S. citizens by birth. [REDACTED] has an eight-year-old son from a prior relationship who is a U.S. citizen by birth. The applicant and [REDACTED] are in their 30's.

On appeal, the applicant states that additional supporting evidence is provided on appeal and contends that the district director did not consider the full impact on the family if the applicant is denied admission.

A letter from [REDACTED], dated May 26, 2010, indicates that the applicant's children are healthy, well developed and well nourished. It states that the applicant and [REDACTED] always accompany their children to appointments and are attentive to the children's needs. It states that the applicant's stepson has a history of mild to intermittent asthma and that he receives treatment in the form of albuterol solution, pulmocort and singularair. It states that the applicant's daughter has recently been referred to a pediatrician otolaryngologist for chronic and recurrent tonsillitis. It states that it would be in the children's best interests for them to be kept in the safety of their family circle.

A letter from [REDACTED], dated April 22, 2010, indicates that [REDACTED] has been a patient since March 2009 for chronic arthralgia (joint pain) for which she is undergoing treatment and further evaluation. It states that [REDACTED] reports that the activities of daily life sometime require assistance and that her husband is her sole support system for performing those duties when her arthralgia becomes severe. It states that it is important that [REDACTED] have/maintain her current family support system as part of dealing with her medical condition.

The record does not establish that the applicant's spouse or children will be unable to receive appropriate treatment in the absence of the applicant or appropriate treatment in Colombia. 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)).

A letter from [REDACTED] teacher, dated April 20, 2010, indicates that the applicant's stepson has been raised by the applicant and plays an important role as a father figure in the boy's life. It states that, without the applicant, the child will suffer a great impact. It states that the child is lucky to have the applicant as a stepfather who raises him with discipline and as if he is his own son.

The record reflects that the applicant has been employed in the United States since 2000. The record reflects that the applicant has never been issued employment authorization.

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud and requires a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i). The applicant has failed to file an Application for Waiver of Grounds of Inadmissibility (Form I-601).

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 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 U.S. citizen spouse, his two U.S. citizen children, his U.S. citizen stepchild, the general hardship to the applicant and his family if he were denied admission to the United States and the absence of a criminal record. The AAO notes that the applicant's marriage, the birth of his children and establishment of the stepchild relationship 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 attempt to enter the United States by fraud; his inadmissibility under section 212(a)(6)(C)(i) of the Act; his failure to comply with a removal order; his unlawful presence in the United States; and his unauthorized employment in the United States.

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.