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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

FILE:

Office: NEW YORK, NY

Date:

FEB 20 2010

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 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 the Dominican Republic who, on October 19, 1995, married [REDACTED] a U.S. citizen. On February 21, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on behalf of the applicant by [REDACTED]. The applicant indicated that she had entered the United States without inspection in January 1993. On June 26, 1997, the applicant was admitted to the United States after presenting advance parole. On April 16, 1999, [REDACTED] withdrew the Form I-130. On the same day, the Form I-485 was denied. On April 29, 1999, the applicant divorced [REDACTED]. On May 28, 1999, the applicant was placed into immigration proceedings. On August 13, 1999, the immigration judge ordered the applicant removed *in absentia*.¹ The applicant failed to depart the United States.

On April 6, 2001, the applicant's lawful permanent resident mother filed a Form I-130 on the applicant's behalf, which was approved on June 22, 2005. On December 29, 2006, the applicant married Angel [REDACTED] a U.S. citizen. On January 14, 2008, the applicant filed a second Form I-485 based on a Form I-130 by [REDACTED].² On September 4, 2008, the Form I-485 was denied. On April 17, 2009, the applicant filed a 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 U.S. citizen spouse, U.S. citizen stepchild 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 June 25, 2009.

On appeal, counsel contends that the district director did not entertain all relevant positive factors and merely focused solely on the applicant's negative factors. *See Counsel's Brief*, undated. In support of her contentions, counsel submits the referenced brief, medical documentation, a country conditions report, employment documentation and copies of documentation already in the record. 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

¹ The record reflects that the applicant was informed in person, during the master calendar hearing, of the date on which she was to again appear before the immigration court.

² The AAO notes that the Form I-130 was not accompanied by a fee and was therefore never actually filed.

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.

The record reflects that [REDACTED] is a U.S. citizen by birth. The applicant has a fifteen-year-old daughter and a fourteen-year-old son from a prior relationship who are both U.S. citizens by birth. The applicant and her spouse do not appear to have any children together. [REDACTED] has a seventeen-year-old son from a prior relationship who is a U.S. citizen by birth.³ The applicant's mother is a native and citizen of the Dominican Republic who became a lawful permanent resident in 1993. The applicant is in her 40s, [REDACTED] is in his 50s and the applicant's mother is in her 60s.

On appeal, counsel states that the applicant is the mother of three children and is the sole caretaker for the children and her U.S. citizen spouse. She states that the applicant cares for the family and the home. She states that the applicant cares for her spouse, who is a corrections officer who works countless hours and suffers from diabetes, which seems to be stabilizing due to the care he receives from his spouse. She states that the applicant is a person of good moral character who has never been arrested and never had any problems with the police. Counsel contends that the applicant has been in the United States for over ten years and that most of this time she did not know that there was an order of removal against her.⁴ Counsel states that the applicant has lived in the United States and has made numerous sacrifices for her children. She states that the applicant's services are needed to keep her family together. She states that [REDACTED] cannot worry about his spouse and children while he is at work because that will get him killed. She states that [REDACTED] works with the worst people in New York - criminals - and he must keep his concentration, not only to protect himself and his

³ The AAO notes that the birth certificate for this child does not reflect the biological parents; however, the AAO will consider the child to be a positive factor in the applicant's case.

⁴ The AAO notes that the applicant has known since at least 2001 that she has an order of removal, as reflected by the response on the Form I-130 indicating that she had been placed in immigration proceedings. Furthermore, the record reflects that the applicant was informed in person of the date of and the consequences of failing to appear at her immigration hearing.

coworkers, but also society. She states that the applicant is a good mother and a good spouse. She states that it is clear from the record that there would be unusual hardship to the applicant's spouse and children. She states that it is impossible to ask the applicant to take her family with her to the Dominican Republic. She states that the children are American and have lived in America since birth. She states that the children only know America and they are entitled to be here as American citizens. She states that it would be troubling for [REDACTED] to reside with the applicant in the Dominican Republic because there is a real threat to the safety and security of American citizens and that the threat is exacerbated by the fact that [REDACTED] is a New York City corrections officer. She states that it is not unreasonable to think that a criminal that was in jail would have been removed back to the Dominican Republic. She states that it would be reasonable to think that someone would recognize him as a corrections officer. Counsel states that the applicant was ordered removed for a minor immigration violation and was not charged with being removable based on a criminal conviction. She states that the applicant is not likely to be a public charge because [REDACTED] current salary is over \$70,000 per year. She states that the applicant understands and knows that she was wrong in not departing the United States; however, this is the only bad thing she has done in United States.

The applicant, in an affidavit in support of a motion to reopen her immigration proceedings, states that she could not appear for the interview in regard to her Form I-485 because of an urgent hospitalization caused by fibrosis. She states that she had been experiencing pain for the past year and was diagnosed with fibrosis and operated on by a gynecological specialist. She states that she continued to have problems connected with a previous operation. She states that she had to be driven to the emergency room on the day of the interview and could not walk because of the pain she was in. She states that the doctor at the emergency clinic diagnosed her with the same symptoms of fibrosis and ordered bed rest for at least two days. She states that she does not have a criminal record in any country, she has continuously paid taxes and she is a caring mother and wife who is an involved member of the community. She states that she cares for three children and her entire household since [REDACTED] works a lot of overtime. She states that her family would suffer extreme emotional hardship if she is not permitted to become a legal permanent resident. She states that her children are teenagers and have attended school in the United States. She states that her children do not know anything other than the American system. She states that she would not want her U.S. citizen children to return with her to the Dominican Republic, nor would she be able to leave them. She states that her children have lived in the United States for their entire lives and she wants them to have all the opportunities that their birth country provides. She states that, in the Dominican Republic, her children's opportunities would be limited and they would have to adjust to a completely different way of life. She states that her closest family members, including her mother, siblings, and uncles, live in New York and she does not have a lot of family left in the Dominican Republic. She states that she and her children would be separated from their family, community and church if they were forced to return to the Dominican Republic. She states that she is a well-integrated member of the community in the United States. She states that she has finished a cosmetology course and would like to continue working in the field. She states that she and her family greatly enjoy the quality of life in the United States and think it is vital for her to be able to provide for her children the quality of life to which they have grown accustomed. She states that her number one priority is making a good life for her family, which she is able to do in the United States. She states that she cannot imagine being separated and that the family relies on each other for support.

[REDACTED], in a letter accompanying the motion to reopen, states that he is happily married to the applicant. He states that he has been a corrections officer for the Department of Corrections in New

York for more than ten years. He states that he met the applicant in 2003 and that they grew a very close relationship together. He states that the applicant is very loyal, respectful, caring and faithful. He states that the applicant has a positive and excellent relationship with his son who lives with them and the applicant's children. He states that the applicant cooks for the children and him with great style. He states that the applicant cleans the clothes and irons, keeps the home clean, takes the children to the doctors, prepares all of the children for school in the morning with their lunch bags, escorts the children to school and he does not know how he would be able to survive or live without her if she is taken from him. He states that he has problems because of the mandatory overtime at work. He states that the family will fall apart without his wife. He states that the applicant should be given a chance to become a productive citizen. He states that the children have been very successful in school because of the applicant's concern in their education and dedication to their success. He states that the applicant is a very responsible parent and plays a very important role in the family composition.

The applicant's stepchild, in a letter accompanying the motion to reopen, states that the applicant is a great person and can cook very well. He states that he does not see his father very often because he works overtime. He states that, when there is a problem with school work, the applicant tries hard to solve the problem. He states that the applicant is there to help him. He states that he has a good understanding with the applicant and she cares for all of them. He states that, if the applicant is removed from the United States, he does not know how they are going to live. He states that everyone will be very sad and it will not be same around the house. He states that the applicant will suffer a great deal without them.

A letter from [REDACTED], State of New Jersey, states that she has worked with the applicant for two years as a case manager. She states that the applicant is very open and cooperative and a pleasure to work with. She states that she has observed the applicant to have a positive relationship with her husband, his son and her biological children. She states that the Department found no criminal charges to be present against the applicant and her spouse. She states that the home is deemed to be appropriate in compliance with foster care standards.

Letters from friends and coworkers state that the applicant is honest, honorable, a hard worker, a good mother, reliable, serious, a good person and responsible. They state that the applicant does not cause problems and relates very well with others.

A letter from Bronx Park Medical Care certifies that the applicant was seen at the facility on July 23, 2008 and may return to work/school on July 25, 2008. A prescription, dated July 23, 2008, indicates that the applicant was prescribed naproxen. The AAO notes that the evidence in the record does not establish that the applicant has been diagnosed with fibrosis, received surgery in the past, or requires future surgeries or further treatment for fibrosis. 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*, 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], states that [REDACTED] has been his patient since January 9, 2007. He states that [REDACTED] has been diagnosed with bilateral leg vasculitis, asthma, hypertension and obstructive sleep apnea. He states that [REDACTED] was recently diagnosed with diabetes. He states that [REDACTED] vasculitis occasionally flares up and his asthma sometimes gives him

problems. He states that [REDACTED] sleep apnea quite frequently causes him to stop breathing at night. He states that [REDACTED] resides with his spouse who takes an active part in his medical care. He states that, without someone at home, it could cause [REDACTED] to have deleterious medical consequences. The AAO notes that the evidence does not establish that [REDACTED] could not receive appropriate care without the applicant's presence in the United States or that he would be unable to obtain appropriate care in the Dominican Republic. 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.*

Employment letters in the record indicate that [REDACTED] has been employed as a New York City corrections officer since July 1, 1998.

The country condition report in the record indicates that the dangers present in the Dominican Republic are similar to those of many major cities. The AAO notes that the country conditions report submitted by counsel does not indicate that [REDACTED] would be subject to a "real threat to his safety and security" in the Dominican Republic or be subjected to an "exacerbated threat" due to his status as a New York City corrections officer. Furthermore, the AAO finds that [REDACTED] would face the same threat each day that he resides in the United States due to his status as a New York City corrections officer. 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.*

The record reflects that the applicant has been employed in the United States from at least October 28, 1997 until April 14, 1999. The record reflects that the applicant filed joint taxes in 1997 and 2007. The record reflects that the applicant filed taxes as head of household in 1998. The record reflects that the applicant was issued employment authorization from April 24, 1998 until April 23, 1999 and from April 4, 2008 until April 3, 2009.

A good conduct certificate from the city of New York Police Department, dated June 24, 2008, indicates that there are no criminal records for [REDACTED].

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, two U.S. citizen children, one U.S. citizen stepchild, a lawful permanent resident mother, the general hardship to the applicant and her family members if she were denied admission to the United States, her filing of joint taxes, the absence of a criminal record and the approved immigrant visa petition filed on her behalf. The AAO notes that the applicant's marriage, the establishment of the stepchild relationship and the filing of the immigrant visa petition 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; her failure to appear at an immigration hearing; her failure to comply with a removal order; her unauthorized employment in the United States except for periods of employment authorization; and her unauthorized and unlawful presence 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 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.