

**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: NEW YORK, NY

Date: FEB 25 2010

RELATES)

IN RE:

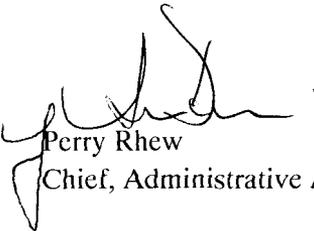
APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: Self-represented

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.¹

The applicant is a native and citizen of Guyana who, on March 26, 1997, appeared at John F. Kennedy International Airport. The applicant presented a Guyanese passport containing a U.S. nonimmigrant visa bearing the name ' [REDACTED] '. The applicant was placed into secondary inspection. The applicant admitted that she was not the true owner of the document and that she did not have valid documentation to enter the United States. On the same day, the applicant was placed into immigration proceedings. On March 27, 1997, the immigration judge ordered the applicant removed from the United States. On April 12, 1997, the applicant was removed from the United States and returned to Guyana.

On May 22, 1997, the applicant's then lawful permanent resident father filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on August 27, 1997.

On December 23, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. The applicant indicated that she reentered the United States without inspection in April 2000. On May 11, 2005, the applicant filed a Form I-212, indicating that she resided in the United States. On July 25, 2005, the Form I-212 was denied. On September 17, 2005, the Form I-485 was denied. On May 22, 2009, the applicant filed a second 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 naturalized U.S. citizen mother.

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 12, 2009.

On appeal, the applicant contends that it was an abuse of discretion to deny the applicant's Form I-212. *See Brief*, dated June 29, 2009.² In support of his contentions, the applicant submits the referenced brief 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.-

¹ The Form G-28, Notice of Entry of Appearance as Attorney or Representative, and the appellate brief are submitted by an individual, [REDACTED], who is not authorized to represent individuals before U.S. Citizenship and Immigration Services (USCIS). All representations will be considered but the decision will be furnished only to the applicant.

² The AAO notes that the brief submitted consists mostly of reiteration of certain portions of the Adjudicator's Field Manual and the reason listed by the AAO for the basis of the applicant's appeal is the only coherent basis for any appeal of the applicant's Form I-212.

- (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 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.

(C) Aliens unlawfully present after previous immigration violations.-

- (i) In general.-Any alien who-
 - (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
 - (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.
- (ii) Exception.

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to

be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver

The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The record reflects that the applicant's spouse is a native and citizen of Guyana, who does not appear to have any lawful status in the United States. The applicant does not appear to have any children with her current spouse. The record reflects that the applicant has two adult children from a prior relationship who are both natives and citizens of Guyana and do not appear to have any lawful status in the United States. The applicant's father was a native of Guyana who became a lawful permanent resident in 1997 and a naturalized U.S. citizen in 2003. The AAO notes that the applicant's father is now deceased. The applicant's mother is a native of Guyana who became a lawful permanent resident in 1997 and a naturalized U.S. citizen in 2006. As such, the applicant's mother may, at the discretion of the district director, be substituted as the petitioner on the approved Form I-130.

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 naturalized U.S. citizen mother, the absence of a criminal record and the approved immigrant visa petition filed on her behalf. The AAO notes that the filing of the immigrant visa petition benefiting the applicant occurred after the applicant was placed into immigration proceedings. It is, therefore, an "after-acquired equity," to which the AAO accords diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original attempt to enter the United States by fraud; her inadmissibility under section 212(a)(6)(C)(i) of the Act; her unlawful reentry into the United States after having been removed; her inadmissibility under section 212(a)(9)(C) of the Act; and her 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.

Beyond the decision of the director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(9)(C)(i)(II) of the Act and does not qualify for a waiver or the exception under section 212(a)(9)(C)(ii) and (iii) of the Act. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating an application to reapply for admission into the United States.³

³ 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).

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.
