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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



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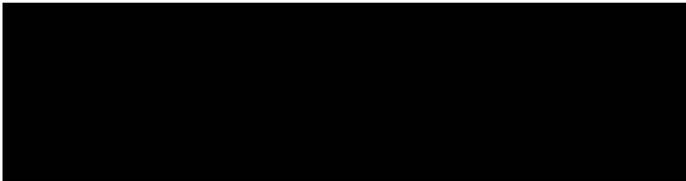
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IN RE:



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 Ecuador, who on August 28, 1995, married [REDACTED], a U.S. citizen by birth in Puerto Rico, in Queens, New York. On February 26, 1996, 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 his behalf by [REDACTED]. The Form I-485 indicated that the applicant entered the United States without inspection in September 1993. On April 6, 2001, the Form I-485 and Form I-130 were denied. On July 2, 2001, the applicant was placed into immigration proceedings. On December 19, 2001, the immigration judge ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On November 5, 2002, the BIA dismissed the applicant's appeal. The applicant failed to depart the United States.

On January 10, 2003, [REDACTED] filed a Petition for Alien Worker (Form I-140) on behalf of the applicant, based on an Alien Labor Certification (ALC). On October 11, 2003, the Form I-140 was approved. On March 16, 2004, the applicant filed a second Form I-485 based on the approved Form I-140. On January 7, 2005, the applicant divorced [REDACTED]. On August 23, 2006, the Form I-485 was denied.¹ On January 26, 2007, the applicant filed the Form I-212, indicating that he continued to reside in the United States. On July 8, 2009, the applicant married his current spouse, [REDACTED] in Kew Gardens, New York. On August 28, 2009, [REDACTED] filed a Form I-130 on behalf of the applicant, which was approved on October 1, 2009. 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 naturalized U.S. citizen spouse.

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 23, 2009.

On appeal, counsel contends that there is additional evidence establishing that the applicant has equities in the United States which offset his negative factors. *See Form I-290B*, dated July 21, 2009. In support of her contentions, counsel submits the referenced Form I-290B, copies of marriage documents, financial documents and photographs. 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

¹ The AAO notes that the applicant, on September 22, 2006, filed a motion to reopen the Form I-485; however, the motion to reopen has not been granted.

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.

The record reflects that [REDACTED] is a native of El Salvador who became a lawful permanent resident in 1996 and a naturalized U.S. citizen in 2003. The applicant and [REDACTED] do not appear to have any children. The applicant is in his 30s and [REDACTED] is in her 20s.

On appeal, counsel states that the applicant and [REDACTED] have opened a bank account together. Counsel contends that the applicant is eligible to adjust status under section 245(i) of the Act.

The applicant, in an affidavit, dated January 24, 2008, states that he works hard to support his family in Ecuador and he knows that he will contribute to the United States if he remains here. He states that he has been in the United States since 1990. He states that his life is in the United States and it will be impossible for him to start a new life elsewhere.

The record reflects that the applicant has been employed in the United States since October 1993. The record reflects that the applicant filed joint or individual taxes from 1995 through 2006. The record reflects that the applicant was issued employment authorization from July 31, 1997 through July 30, 1998, from October 22, 1998 through October 21, 1999, from March 22, 2001 through March 21, 2002 and from September 7, 2004 through September 6, 2005.

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, the general hardship to the applicant and his family if he were denied admission to the United States, his filing of taxes and the two approved immigrant visa petitions filed on his behalf. The AAO notes that the applicant's marriage and the filing of the immigrant visa petitions 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 original unlawful entry into the United States; his failure to comply with a removal order; his unlawful presence in the United States; and his unauthorized employment in the United States, except for periods of authorized 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.