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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

PUBLIC COPY

#4

[redacted]

FILE: [redacted] Office: NEW ORLEANS, LA Date: JAN 19 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:

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 Field Office Director, New Orleans, Louisiana, 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 appears to be represented; however the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

The applicant is a native of Iran and citizen of Canada, who on September 17, 2005, married [redacted], a naturalized U.S. citizen. On October 12, 2007, 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 her behalf by [redacted]. The Form I-485 indicated that the applicant last entered the United States as a visitor on September 4, 2007.

On June 14, 2008, the applicant appeared at the Peace Bridge, New York port of entry. The applicant presented her Canadian passport and stated that she was picking up her husband from the airport. The applicant was placed into secondary inspection. The applicant eventually admitted that she had concealed her true intention in entering the United States, which was to visit her in-laws prior to returning to her residence in New Orleans. The applicant admitted that she also attempted to avoid NSEERS registration requirements. The applicant admitted that her Application for Travel Document (Form I-131) specifically for Advance Parole, had been rejected and that she did not have valid documentation to enter the United States. The applicant was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without valid documentation. On June 14, 2008, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

On June 19, 2008, the applicant was admitted to the United States on humanitarian parole. On September 5, 2008, the Form I-130 was approved. On September 8, 2008, the Form I-485 was denied. On October 1, 2008, the applicant filed a second Form I-485 based on the approved Form I-130. On December 19, 2008, the applicant filed the Form I-212, indicating that she continued to reside in the United States. On May 19, 2009, the Form I-485 was denied. On August 3, 2009, the applicant was placed into immigration proceedings, which are still pending. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 spouse and U.S. citizen child.

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 May 5, 2009.

On appeal, the applicant contends that the field office director unwarrantedly concluded that she conducted herself with wanton disregard for immigration law and regulations. The applicant contends that the severe consequences of the punishment imposed on her and her family is unwarranted and the application should be approved. *See Brief,* dated June 4, 2009. In support of

these contentions, the applicant submits the referenced brief, a copy of her Canadian driver's license and bank account statement, a copy of the statement in support of her humanitarian parole 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 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.
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> (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 is a native of Armenia who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1995. The applicant and [redacted] have a two-year old son who is a dual national of the United States and Canada by birth. The applicant and [redacted] are in their 30's.

On appeal, the applicant states that she left the United States in order to obtain urgent medical care in Canada and was unaware that she required advance parole in order to reenter the United States. The applicant contends that the fact that she had applied for advance parole does not mean that she was aware that she was required to obtain advance parole in order to reenter the United States. The applicant states that she contacted the National Customer Service Center and inquired as to whether she needed any other documentation in order to travel to Canada. The applicant states that she was incorrectly informed that she did not need a travel document because she was a Canadian citizen. The applicant states that she returned to Canada relying upon this misinformation. The applicant contends that she had previously departed and reentered the United States in April, 2008 without

requiring advance parole. The applicant contends that the underlying actions of immigration officers in subjecting her to expedited removal were not warranted.

The AAO notes that there is no evidence in the record to establish that the applicant received medical attention at the time she returned to Canada. The AAO notes that the applicant's statement to immigration officers indicates that the applicant returned to Canada on April 20, 2008 and that she had not departed the United States and reentered after having filed the first Form I-485 prior to the date on which she was expeditiously removed. The AAO notes that there is no evidence in the record to support the assertion that the applicant had previously reentered the United States without advance parole after filing the Form I-485. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

While the applicant contends that her filing of the application for advance parole does not mean that she was aware of the requirement for advance parole when she departed the United States, the AAO finds that the applicant was indeed aware of the requirement. The instructions to Form I-485 and Form I-131 clearly state that an applicant for adjustment of status is required to apply for and receive advance parole prior to departure from the United States (except in certain cases in which the applicant has a specific visa type, which does not apply to the applicant), including brief visits to Canada or Mexico. The applicant, in filing the Form I-485 and Form I-131, must have read the instructions for filing these forms in order to have known that she was required to submit them (as reflected by her submission of both of these forms along with an application for employment authorization). Furthermore, the AAO finds that the nature of the applicant's misrepresentations to immigration officers is inconsistent with the assertion that she was attempting to merely speed up the NSEERS registration process for her brother. Since the applicant was attempting to make a scheduled flight, she would have stated to immigration officers that she was required to board a flight within the next two hours and not that she needed to pick up her husband from the airport (the need to retrieve a person from the airport does not convey the same time sensitivity as does the need to board a plane). Moreover, the applicant, in planning to enter the United States with sufficient time to clear the port of entry and board her flight, would have planned for time constraints associated with NSEERS registration since she was fully aware that her brother was required to register and that it had previously taken three hours. Additionally, while the applicant contends that she was misinformed by U.S. Citizenship and Immigration Services (USCIS) that she was free to travel without advance parole, the applicant's responses to immigration officers at the port of entry actually reflect that she did not notify USCIS that she was departing the United States and, while the applicant stated that she had inquired as to whether she could depart the United States, she did not testify that USCIS had misinformed her that she was able to depart the United States without advance parole. It was only after the applicant had been removed from the United States that she began to assert that she had been misinformed by USCIS that she could depart the United States without advance parole, an assertion which conflicts with the applicant's prior actions in filing a Form I-131 and in the type of information she concealed from immigration officers at the port of entry.

The applicant contends that, while she admitted to incorrectly stating that she was picking up her husband at the airport, when she herself was traveling to Los Angeles and then onto New Orleans, her intention was not to evade NSEERS requirements. The applicant states that she was aware that

her brother was subject to NSEERS requirements but hoped that informing immigration officers that she needed to pick up her husband would encourage the officers to process her brother on an expedited basis, which had taken approximately three hours in the past. The applicant contends that her misrepresentations were not willful misrepresentations of material facts and do not rise to the level that would warrant being subject to expedited removal. The applicant states that she was not subject to removal due to fraud or misrepresentation of a material fact. The applicant contends that she timely retracted her statement and was honest in her statements that she was visiting in-laws in Los Angeles.

As discussed above, the applicant's actions and statements are not consistent with her contentions as to her willful misrepresentations. Furthermore, the applicant's retraction of her statements was not timely since she only retracted them after she had been placed into secondary inspection and had been confronted with evidence that she herself was traveling within the United States and resuming her U.S. residency.

Moreover, the record provides sufficient evidence to demonstrate 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) as an alien who has entered the United States by misrepresenting a material fact or by fraud, above and beyond her actions in seeking admission at the port of entry on June 14, 2008. On September 4, 2007, when the applicant entered the United States as a nonimmigrant visitor, she was, instead, an intending immigrant. The applicant entered the United States on September 4, 2007, as a nonimmigrant. While the Form I-130 and Form I-485 were not officially filed until October 12, 2007, the Form I-485 and accompanying Biographical Information Sheet (Form G-325) were signed and dated by the applicant on September 16, 2007, 12 days following her nonimmigrant admission. In that the completion of the Form I-485 and Form G-325 indicates immigrant intent on the part of the applicant within 30 days of her nonimmigrant admission, the AAO finds the evidence of record to establish that the applicant was an intending immigrant when she entered the United States on September 4, 2007. Therefore, the record establishes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. In order to apply for a waiver under section 212(i) of the Act, an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601).

The applicant contends that the field office director's referral to her residence in the United States from January 2004 until September 2006 requires the important distinction that she still maintained a Canadian residence and was admitted to the United States during this time as a visitor. The applicant contends that she was not required to obtain a visa in order to enter the United States on these occasions and was not given an Arrival/Departure Record (Form I-94) for these admissions. The applicant states that she was permitted to enter the United States during this period of time in order to participate in an elective clerkship.

The record reflects that the applicant required a visa and was admitted as a B-1 nonimmigrant visitor during her participation in the clerkship. During the period of time in question, the applicant was issued Form I-94s each time she entered the United States and was given a specific period of time by which to depart the United States. The record also reflects that, on at least one occasion, the applicant overstayed her admission to the United States, which caused her nonimmigrant visa to become void under section 222(g) of the Act. While the applicant was subsequently readmitted to the United States utilizing this visa, despite the fact that it was void, the applicant still violated immigration laws by overstaying her prior admission.

The applicant contends that the field officer director's decision fails to consider many other positive factors in her case and is based upon the mistaken conclusion that she has a wanton disregard for U.S. immigration laws and regulations. The applicant states that her husband is a resident in New Orleans, a city which is still recovering from Hurricane Katrina. She states that her husband's desire to help with the restoration of the city is a commendable goal, especially in light of the shortage of doctors in Louisiana. The applicant states that she shares her husband's desire to practice medicine in New Orleans. The applicant contends that it is important to note that she was granted humanitarian parole in Buffalo, New York and that the fact that there was a basis for parole is a favorable factor.[1] The applicant states that she is a law-abiding, hard-working, contributing member of society, as evidenced by her desire to work as a physician in New Orleans post hurricane Katrina. The applicant states that she is a wife and mother to U.S. citizens who continue to suffer hardship during this ordeal.

The applicant, in a statement supporting her application for humanitarian parole, states that she obtained a student visa in order to attend a clerkship in Atlanta, Georgia and remained there for two years. She states that she and her husband shared a mutual agreement that New Orleans was the location in which their futures would prosper. She states that, after the destruction of hurricane Katrina, she and her husband felt that New Orleans was the place where U.S. citizens needed the most help. She states that they willingly chose to live in Louisiana. She states that, approximately two months after the birth of her child, she traveled to New Orleans and settled with her husband in a recently rented apartment. She states that she began to apply for adjustment of status without the aid of an attorney due to the costs. She states that she decided to return to Canada after she became ill from the stress of living with a baby while her husband was at work. She states that she contacted USCIS to confirm whether she required any additional documentation to return to Canada and was advised that, since she was Canadian, she was free to travel back and forth. She states that when she attempted to reenter the United States she was extremely nervous because she wanted to reunite with her husband. She states that she informed immigration officers that she was picking up her husband at the airport because she knew her brother was required to register and she wanted to speed up the process. She states that, since her flight was in two hours, she felt as if she had no choice but to give false information. She states that she was embarrassed and deeply emotional after the officers confronted her with her airline ticket and confessed that she was traveling to Los Angeles and then onto New Orleans. She states that words cannot express the anxiety and remorse she felt after this incident. She states that she knew she was wrong and asks for a second chance. The AAO notes that this statement is unsigned and undated.

An undated letter from states that he has been treating [redacted] for depression caused by the stress of the applicant's immigration case. He states that [redacted] was seen in the past for treatment of anxiety disorder from February 2008 until December 2008 and the prior therapist was debating Pharmaco therapy. He states that, over the past few months he has interviewed [redacted] and he has shared with him the fears he has of losing his wife and child. He states that stress of this case has hindered his performance at work and his ability to focus on menial tasks. He states that [redacted] has studied many years to become a doctor and receive his license and the thought of relocating to another country in order to start his schooling from the beginning puts an enormous strain on him which is highly unhealthy. He states that the high cost of

[1] The AAO finds that granting of humanitarian parole itself is not a favorable factor; however, an alien who has been paroled doe not accrue unlawful presence as long as the parole lasts. Section 212(a)(9)(B)(ii) of the Act.

becoming a medical doctor has forced [redacted] to engage in loans which he is currently paying off and relocation would have serious financial consequences, as well as from an emotional standpoint. He states that [redacted] and the applicant have a young child together and, from a psychological perspective, the separation of immediate family members causes high emotional stress for parents, as well as negative consequences for the young child. He states that the child has grown a strong attachment to his father and mother and is dependent upon them both. He states that [redacted] is the sole provider for the family. [redacted] concludes that it is not difficult to see that the fear of losing family would cause great distress and emotional chaos in the family's lives and [redacted] has exhibited that staying close to his family is his first priority. He states that, due to the sessions he has had with he would conclude that is clinically depressed and would benefit from treatment.

The AAO notes that there is no evidence to establish that the applicant's spouse has continued to require counseling since [redacted] evaluation. In that [redacted] is a family practitioner, and not a qualified psychotherapist or psychologist, the AAO does not find his statements and conclusions to reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional. As a result, [redacted] statements and conclusions must be considered speculative and of diminished value. There is no evidence to indicate that [redacted] would be unable to receive appropriate treatment in the absence of the applicant or if he accompanied her to Canada. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, Supra.*, *Matter of Treasure Craft of California. Supra.*

The record reflects that the applicant filed joint taxes in the United States in 2007.

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, her U.S. citizen son, the general hardship to the applicant and her family 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 finds that the unfavorable factors in this case include the applicant's prior overstays in the United States; her unlawful presence in the United States; her entry into the United States as a nonimmigrant by willful misrepresentation of her immigrant intent; her inadmissibility under section 212(a)(6)(C)(i) of the Act; and her willful misrepresentations in attempting to enter the United States on a second occasion as a nonimmigrant with immigrant intent.

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.