

**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**

74



FILE:



Office: BUFFALO, NY

Date: **MAR 24 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: 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).

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Buffalo, 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 of China and citizen of Canada who, on September 30, 2007, appeared at the Niagara Falls, New York port of entry. The applicant presented his Canadian passport. The applicant was placed into secondary inspection. The record reflects that the applicant had previously applied for admission to the United States on May 7, 2007, May 14, 2007, May 19, 2007, May 21, 2007, July 15, 2007 and August 8, 2007. The record reflects that the applicant, on each occasion, had been denied admission to the United States for lack of ties to Canada. The record reflects that, on August 8, 2007, the applicant attempted to conceal his true purpose for entering the United States by stating that he sought to enter for "sight-seeing" purposes, while previously he had indicated and, eventually he admitted, that he actually sought to enter the United States in order to collect lottery winnings. The applicant testified that he had previously resided in the United States for one year in 1995 and one year in 1996. The applicant's testimony to immigration officers and the evidence he presented to them to support his claims of family ties and employment in Canada conflicted and it was determined that the applicant was truly seeking to enter the United States to reside permanently. 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 September 30, 2007, 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 October 20, 2007, the applicant filed the Form I-212, indicating that he resided in Canada. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 return to the United States as a nonimmigrant to deal with his lottery matter after having been notified of an official win.

The field office director determined that the applicant did not warrant a favorable exercise of discretion. *See Field Office Director's Decision*, dated May 6, 2009.

On appeal, the applicant contends that the field office director's denial of the Form I-212 prevents the applicant from collecting his lottery prize, is not reasonable and violates the agreements and principal of humanity. The applicant contends that the denial of the Form I-212 has resulted in extreme hardships. *See Attachment to Form I-290B*, undated. In support of his contentions, the applicant submits the referenced attachment, a photocopy of his passport identity page, purported lottery winning notice, a letter from the applicant's Canadian barrister and solicitor, and a photocopy of a purported newspaper clipping. 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 the applicant does not appear to have any relatives in the United States or an immigrant or nonimmigrant petition filed on his behalf. The record does not reflect that the applicant is married or has any children. The record reflects that the applicant is in his 40s.

On appeal, the applicant contends that his removal from the United States is related to a small case of interfering with property that was the result of a misunderstanding. The applicant states that, in 2008, the Ontario High Court stayed the decision in his case. The applicant states that the decision in his case is an after-acquired equity and it should be given weight. The record contains a certified copy of the charges against the applicant. The record reflects that the applicant was charged with committing mischief contrary to the criminal code and that the decision was stayed. The record indicates that the applicant paid a fine and completed six hours of community service prior to issuance of the stay of proceedings. As such, under Canadian law, the applicant accepted responsibility for the charges and received the punishment of a fine and community service. Pursuant to section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), the applicant's stay of proceedings in his case is still a conviction for immigration purposes.

The AAO finds that the applicant was not refused admission to the United States or removed from the United States due to the charges against him. As discussed above, the record clearly reflects that the applicant did not have sufficient ties to Canada and his testimony and evidence was in conflict, supporting a finding that the applicant had immigrant intent.

The applicant, in the attachment to the Form I-290B, contends that the field office director's denial of the Form I-212 prevents the applicant from collecting his lottery prize, is not reasonable and violates the agreements and principal of humanity. The applicant contends that the denial of the Form I-212 has resulted in extreme hardships. The applicant states that he has strong ties to Canada and intends to return home after his business trip is completed. The applicant states that he has a niece living in Hamilton, Ontario, to whom he makes frequent phone calls and emails. The applicant states that his bank accounts establish that he has a home in Toronto and has both U.S. and Canadian dollar accounts. The applicant states that he is the owner of property, he has a private car purchased from a Honda dealer and he has established the Central Hotel business in Toronto. The applicant states that he has resided in Canada for the past thirteen years. The applicant states that he has only been to the United States on one occasion over the past thirteen years. The applicant states that his lottery winnings of \$10 million are a major favorable factor and should be given heavy weight. The applicant states that the FreeLotto Company will not mail his check to him overseas, which means he has to go to New York to sign for and pick up the prize himself. The applicant states that he cannot wait five years for the lottery check. The applicant states that his home business is short of cash flow and cannot fully operate as planned and is facing huge losses. The applicant states that he has strong financial commitments, such as supporting his elderly parents, and that the lottery money is required to repay business loans, personal loans, credit cards, etc.

A translation of a Reserva from Argentina, dated May 14, 2009, indicates that the applicant owns property located in Buenos Aires, Argentina. A vehicle purchase agreement from Centre Honda, Toronto, dated May 27, 2002, indicates that the applicant purchased a 1998 Honda Accord. The record contains a Custom Account Information for direct deposit or preauthorized payment sheet, dated May 19, 2009, from CIBC. A letter from CIBC, dated January 16, 2009, indicates that the applicant has an account at the bank that was subject to account fees and agreement changes. The record contains a Ministry of Revenue Return for [REDACTED], indicating that from January 1, 2009 until March 31, 2009 the business did not make any sales. The record contains a vendor permit for [REDACTED], under the applicant's name and dated June 4, 2008. A Tenancy Agreement, executed in 2008, indicates that the applicant leases his residence on a month-to-month basis. Letters from various utility and cable companies indicate that the applicant resides at the above listed residence.

The AAO finds that this documentation does not establish strong ties to Canada and reflects that the applicant does not own property in Canada, but rather owns property in Argentina. Furthermore, this documentation does not establish that the applicant's business is generating any income to support him and the applicant has not provided detailed bank accounts to indicate how he currently supports himself or would support himself in the United States. The documentation in the record does not establish that the applicant has any relatives in Canada or that he has any other relatives, in Canada or elsewhere.

A Declaration of Decision, dated May 14, 2007, indicates that the applicant is the winner of three separate lottery amounts. The amounts listed are \$100,000, \$10 million, and \$10,000. A letter from [REDACTED] dated May 30, 2007, states that the applicant has one the official lottery notice. A second letter from [REDACTED], dated May 30, 2007, states that the attached photocopy is an excerpt from the Metro Newspaper in support of the lottery prize awarded to the applicant. The AAO notes that none of the documentation in support of the applicant's purported lottery winnings indicates that

the applicant's presence is required in the United States in order to obtain said winnings. Furthermore, a report from the consumer reporting organization in the United States establishes that the documentation sent to the applicant notifying him of the lottery winnings is a scam.<sup>1</sup> Finally, the legitimate FreeLotto Co. is a U.K.-based company and is not based in the United States.

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 7<sup>th</sup> Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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

---

<sup>1</sup> See [www.consumerfraudreporting.org/lotteryscam\\_FreeLotto.php](http://www.consumerfraudreporting.org/lotteryscam_FreeLotto.php).

equities” are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

As established by the record, there are no favorable factors in this matter.

The AAO finds that the unfavorable factors in this case include the applicant’s multiple attempts to enter the United States without proper documentation; his conviction for criminal mischief; his lack of ties to Canada; his lack of income in Canada; and his attempt to conceal his true intention in entering the United States.

The applicant in the instant case has multiple immigration violations and a conviction. 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.