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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**

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FILE:

[REDACTED]

Office: HOUSTON, TX

Date:

**NOV 09 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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Houston, Texas, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed the subsequent appeal and a motion to reconsider. The matter is now before the AAO on a second motion to reconsider.<sup>1</sup> The motion to reconsider will be dismissed. The order dismissing the appeal will be affirmed.

The record reflects that the applicant is a native and citizen of Pakistan who, on December 5, 1995, filed an Application for Asylum and for Withholding of Deportation (Form I-589). The applicant indicated that he had entered the United States without inspection on September 8, 1995. On January 11, 1996, the Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings. On April 15, 1996, the immigration judge ordered the applicant removed *in absentia*. On July 31, 1996, a warrant for the applicant's removal was issued. The applicant failed to depart the United States.

In April 1999, the applicant departed the United States and returned to Pakistan in order to seek consular processing of a Diversity Visa application. On April 19, 1999, the applicant was admitted to the United States as a lawful permanent resident under the diversity visa program. On October 1, 2003, the applicant was encountered by deportation and removal officers. Deportation and removal officers determined that the applicant had failed to inform the U.S. Consulate of his prior removal at the time he sought his immigrant visa. On October 1, 2003, the applicant was placed into immigration proceedings under section 237(a)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1226(a)(1). On November 12, 2003, the applicant's then lawful permanent resident spouse filed a Petition for Alien Relative (Form I-130). On November 12, 2003, the applicant filed the Form I-212, along with an Application for Waiver of Grounds of Inadmissibility (Form I-601). On April 15, 1996, the immigration judge granted U.S. Immigration and Customs Enforcement's (USICE) motion to terminate proceedings. USICE indicated that the applicant's immigrant visa had been cancelled and that USICE intended to reinstate the applicant's prior removal order. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On November 29, 2005, the BIA dismissed the applicant's appeal. The applicant seeks a waiver under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his now naturalized U.S. citizen spouse and five U.S. citizen children.

The district director determined that the applicant was subject to reinstatement provisions under the Act and was ineligible to apply for any relief. The district director denied the Form I-212 accordingly. *See District Director's Decision*, dated March 22, 2006.

On January 7, 2009, the AAO dismissed the applicant's appeal because the applicant did not warrant a favorable exercise of discretion. *Decision of AAO*, dated January 7, 2009.

In his motion to reopen or reconsider, former counsel contended that the AAO exceeded the scope of its appellate authority in ruling on the merits of the Form I-212.<sup>2</sup> Former counsel contended that the

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<sup>1</sup> The AAO notes that counsel incorrectly indicated that he was appealing the dismissal of the previous motion to reconsider.

<sup>2</sup> The AAO conducts the final administrative review and enters the ultimate decision for USCIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. *See Helvering v. Gowran*, 302 U.S. 238,

AAO failed to give "diminished weight" to both the negative, as well as positive factors in the applicant's case. *See Counsel's Motion to Reconsider.*

In the motion to reconsider, counsel contends that the appellant's failure to file the Form I-212 before reentering the United States is not necessarily an act of misrepresentation and fraud. Counsel contends that imposing a duty on the applicant to disclose information of which he was unaware is against fundamental fairness and principles of justice and is a violation of the appellant's due process rights. Counsel contends that, despite the diminished weight, the applicant's circumstances warrant permission to reapply for admission. *See Counsel's Brief*, dated February 1, 2010. In support of his motion to reconsider, counsel submits the referenced brief and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

The regulation at 8 C.F.R. § 103.5(a) provides, in pertinent part:

(3) *Requirements for motion to reconsider.*

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In support of the motion to reconsider, counsel contends that appellant's failure to file the Form I-212 before reentering the United States is not necessarily an act of misrepresentation and fraud. Counsel contends that imposing a duty on the applicant to disclose information of which he was unaware is against fundamental fairness and principles of justice and is a violation of the appellant's due process rights. The record reflects that the applicant committed fraud and willful misrepresentation of a material fact when he concealed that he had failed to *attend* an immigration hearing (and thus was ordered removed). The applicant was clearly aware that he had failed to attend an immigration hearing within the last five years when he indicated on the Form DS-230 that he had not failed to attend any immigration hearings. As such, counsel's contentions in regard to whether the applicant made a willful misrepresentation or whether an unfair duty was imposed upon the applicant because he was unaware that he had been ordered removed *in absentia*, are unpersuasive and illogical.

Counsel contends that, despite the diminished weight, the applicant's circumstances warrant permission to reapply for admission. Counsel contends that the AAO has taken the position that, since the applicant gained his permanent residence through fraud, all of the resulting equities are the result of fraud and are "after-acquired equities." Counsel contends that the AAO has lost sight of the fact that the applicant is seeking *nunc pro tunc* permission to reapply for admission. The AAO finds counsel's contentions unpersuasive. First, the AAO did not find the applicant's family members to be after-acquired equities because they became permanent residents through the applicant's fraud. 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

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245-246 (1937); see also, *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd, 345 F.3d 683 (9th Cir. 2003). The AAO was, therefore, within its appellate authority to adjudicate the Form I-212 on the merits.

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 equities" are accorded less weight for purposes of assessing favorable equities in the exercise of discretion. The applicant's family members are after-acquired equities because they became lawful permanent residents and naturalized or derivative U.S. citizens after the applicant was placed into immigration proceedings in 1996. The AAO notes that all of the applicant's family members became lawful permanent residents after he was placed into immigration proceedings and are, thus, all after-acquired equities.

Counsel contends that, despite the diminished weight, the applicant's circumstances warrant permission to reapply for admission. Counsel's contentions are unpersuasive. The AAO has already weighed the positive and negative factors in the applicant's case and found the applicant's case to not warrant a favorable exercise of discretion. Simply stating that the applicant warrants a favorable exercise of discretion is insufficient.

The AAO finds that counsel has failed to identify the reasons for reconsideration supported by pertinent decisions to establish that the AAO's decision was based on an incorrect application of law.

After a careful review of the record, it is concluded that the applicant has failed to establish that the contentions submitted in the motion to reconsider meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider is dismissed pursuant to 8 C.F.R. § 103.5(a)(4) for failing to meet applicable requirements, and the order dismissing the appeal is affirmed.

**ORDER:** The motion to reconsider is dismissed. The order dismissing the appeal, dated January 7, 2009, will once again be affirmed.