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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

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FILE:



Office: LOS ANGELES, CA

Date: **NOV 22 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:

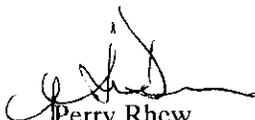


INSTRUCTIONS:

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, with a fee of \$630. 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 Field Office Director, Los Angeles, California, 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 Mexico who, on January 21, 1996, appeared at the San Ysidro, California port of entry. The applicant presented an I-586 border crossing card 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 she did not have valid documentation to enter the United States. The applicant failed to provide her true identity to immigration officers. On January 21, 1996, the applicant was placed into immigration proceedings under the name [REDACTED]. On February 9, 1996, the applicant's naturalized U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was later administratively closed. On February 5, 1996, the applicant was ordered removed from the United States under the name [REDACTED]. On February 5, 1996, the applicant was removed from the United States and returned to Mexico.

On September 24, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a second Form I-130 filed on her behalf by her naturalized U.S. citizen spouse. The Form I-485 indicates that the applicant reentered the United States without inspection in March 1997. On February 16, 1999, the applicant filed a Form I-212. On August 25, 2000, the Form I-485 was denied. On July 8, 2004, the Form I-212 was denied.

On May 5, 2006, the applicant filed the Form I-212, indicating that she resided in the United States. On January 25, 2007, the applicant filed a second Form I-485 based on a third Form I-130 filed on her behalf by her naturalized U.S. citizen spouse. On August 11, 2009, the third Form I-130 was approved. On the same day, the second Form I-485 was denied. 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 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 August 11, 2009.

On appeal, counsel contends that the facts clearly demonstrate circumstances creating the basis for a finding of extreme hardship to the applicant's U.S. citizen spouse.<sup>1</sup> *See Counsel's Brief*, dated October 5, 2009. In support of his contentions, counsel submits the referenced brief, copies of educational documentation, medical insurance cards, photographs, financial information and copies

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<sup>1</sup> The AAO notes that extreme hardship is not required for a finding that an applicant should be granted permission to reapply for admission; however, hardship to the applicant and family members may be considered a positive factor in determining whether an applicant warrants a favorable exercise of discretion. As such, counsel's comparison of the applicant's case to case law regarding extreme hardship standards is inappropriate and will not be addressed.

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.
- (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 AAO finds that the applicant is inadmissible pursuant to section 212(6)(C)(i) of the Act for attempting to enter the United States by fraud. To seek a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601). The AAO notes that the applicant has failed to file a Form I-601.

The record reflects that the applicant married her spouse, [REDACTED] on January 13, 1996, in Mexico. [REDACTED] is a native of Mexico who became a lawful permanent resident in 1978 and a naturalized U.S. citizen in 1988. The applicant and [REDACTED] have a 12-year-old daughter who is a U.S. citizen by birth. The applicant's mother was a native and citizen of Mexico

who became a lawful permanent resident in 1992; however, the applicant's mother is now deceased. The applicant and [REDACTED] are in their 40's.

Counsel contends that the field office director overlooked the fact that individual factors must be considered in their totality in order to determine the complete extent of hardship to the family member. Counsel contends that the economic hardship to the applicant's spouse is but one contributing factor among various elements compounding the extreme nature of suffering that the applicant's family would inevitably endure if she were not granted permission to reapply for admission. Counsel contends that the denial of the applicant's Form I-212 would be an extremely unjust result that goes directly against public policy of assuring family unity. Counsel contends that preservation of family unity considerations dictate that the relief sought by the applicant must be granted. Counsel contends that the field office director failed to adequately consider the existence of the applicant's U.S. born child.

Counsel states that, at the present time, [REDACTED] is the sole economic provider in the household and that, without the applicant, he would undoubtedly be ruined financially. Counsel states that the applicant's child will suffer immense hardship in the case of the applicant's relocation to Mexico since she would be deprived of her mother's affection. Counsel states that it is clear that the applicant would be unable to find a job to support her family in Mexico due to her educational level and lack of employment history. Counsel states that [REDACTED] would also be unable to secure employment in Mexico that would enable him to ensure his family's financial stability or even survival. Counsel states that [REDACTED] has virtually non-existent chances of obtaining a similarly paying job due to the current economic conditions in Mexico. Counsel states that it would be practically impossible for [REDACTED] to maintain two households if he were to remain in the United States since his income is insufficient to provide for all of his family members. Counsel states that it is virtually impossible for [REDACTED] to imagine his life without the applicant. Counsel states that the family will be undeniably disrupted and utterly devastated if the applicant is not permitted to remain in the United States. Counsel states that it would be devastating for [REDACTED] to abandon the United States and his well-established career in order to relocate to an unfamiliar country. Counsel states that [REDACTED] would be abandoning a country that is his own and which he worked hard to become a full part of. Counsel states that [REDACTED] has never been on public assistance. The AAO notes that counsel fails to submit any evidence in regard to the claimed impact of a denial upon the applicant's family members. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel states that the applicant has strong family ties in the United States. Counsel states that the applicant is married to a U.S. citizen, has a U.S. citizen child and is the daughter of a lawful permanent resident. Counsel states that [REDACTED] has no criminal record in the United States and has never had any problems with the police. Counsel states that [REDACTED] is a long-time resident of the United States. Counsel states that [REDACTED] provides financially for the applicant and his child. Counsel states that [REDACTED] has never had any problems with immigration.

A Certificate of Completion indicates that the applicant completed "The HIV-AIDS and Women Workshop" at Telfair Elementary School on March 6, 2006. A Certificate of Completion indicates that the applicant successfully completed "Pre-Employment Guidelines Workshops" at Valley Economic Development Center on May 13, 2004. A Certificate of Completion indicates that the applicant successfully achieved English language skills in "ESL, Intermediate High A" at Pacoima Skills Center on May 4, 2007. A Certificate of Completion indicates that the applicant successfully achieved English language skills in "ESL, Beginning High (Level 2)" at Kennedy-San Fernando Community Adult School on June 4, 2004. A Certificate of Completion indicates that the applicant successfully completed a "Financial Literacy Course" at Valley Economic Development Center on May 27, 2004. A Certificate of Completion indicates that the applicant successfully achieved English language skills in "ESL, Beginning High (Level 2)" at Kennedy-San Fernando Community Adult School on June 22, 2005. A Certificate of Completion indicates that the applicant completed the requirements for "Parenting Classes" at El Centro de Amistad, Inc. on December 9, 2004. A Certificate of Recognition from the City of Los Angeles indicates that the applicant received an award for outstanding efforts to complete a 6 week Financial Literacy Class on May 27, 2004. A Certificate of Completion indicates that the applicant participated in "Family Math Training" by Parent Pioneers. A Certificate of Completion indicates that the applicant participated as a Parent Volunteer at the Telfair Elementary School in 2003. A Certificate of Completion indicates that the applicant participated in "[REDACTED]" with Friends of the Family in 2004.

Documentation in the record establishes that the applicant's daughter has been issued achievement awards for reading, academic achievement, English language arts, mathematics and participation. Documentation in the record establishes that the applicant, [REDACTED] and their child have medical and dental insurance in the United States.

The record reflects that the applicant filed joint taxes from 1999 through 2008. The applicant has been employed in the United States since at least December 10, 2007. The applicant has been issued employment authorization from April 19, 2007 until February 23, 2010. The AAO notes that the applicant's employment authorization was automatically revoked when the applicant's Form I-485 was denied on August 11, 2009.

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 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 spouse, her U.S. citizen child, the general hardship to the applicant and her family if she were denied admission to the United States, the applicant's clear criminal history, filing of joint tax returns and the approved immigrant visa petition filed on her behalf. The AAO notes that the birth of the applicant's child and the filing of the immigrant visa petition benefitting her 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 attempt to enter the United States by fraud; her inadmissibility under section 212(a)(6)(C)(i) of the Act; her failure to provide her true identity to immigration officers; her illegal entry into the United States after having been removed; her unlawful presence in the United States; and her unauthorized employment in the United States, except for periods of authorized employment.

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.