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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



H4

FILE:



Office: MEXICO CITY, MEXICO

Date:

**FEB 28 2011**

IN RE:



APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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.

Thank you,  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ecuador. He was found to be inadmissible to the United States under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), as an alien who has been ordered removed and is seeking admission within ten years of departure. He is married to a U.S. citizen and has one U.S. citizen child.

In her decision, the District Director found that the applicant did not merit a favorable exercise of discretion and denied the application accordingly. *Decision of the District Director*, dated September 5, 2008.

Section 212(a)(9)(A) 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 on 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 includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; a statement from [REDACTED] regarding the applicant's spouse; A medical care statement regarding the applicant's spouse from [REDACTED]; a disability certificate regarding

the applicant's spouse from Alliance Medical Office, P.C.; medical documents and a police report related to an auto accident involving the applicant's spouse; A Letter of Medical Necessity regarding the applicant's spouse's father from [REDACTED]; A Letter of Medical Necessity regarding the applicant's sister from [REDACTED]; psychological evaluation of the applicant's sister by [REDACTED] a psychological evaluation of the applicant's spouse by [REDACTED] A letter from the applicant's spouse's employer regarding her work performance; a statement from [REDACTED] regarding the applicant's spouse's ear condition; statements from family members of the applicant; and documents filed in conjunction with the applicant's Form I-485 application and a Form I-130 petition and Form I-864 affidavit of support on his behalf.

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 applicant 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 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-Nunoz 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 considering discretionary weight. 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 cited legal decisions to establish the general principle that "after-acquired equities" are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

The AAO now turns to a consideration of positive and adverse factors in the present case.

The AAO finds that the unfavorable factors in this case include the applicant's unlawful presence and employment in the United States, as well as his entry without inspection and failure to depart the United States pursuant to the order of an immigration judge.

The favorable factors in this case include the presence of the applicant's spouse and child, the hardship his spouse would experience if he were not admitted to the United States, his long term residence in the United States, family statements attesting to his moral character and the lack of any criminal record during his residence in the United States.

The AAO finds that the applicant's actions in this matter cannot be condoned. Nonetheless, given all of the circumstances of the present case, the negative factors are outweighed by the favorable factors and thus the applicant warrants a favorable exercise of discretion. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.