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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

Date: Office: CIUDAD JUAREZ, MEXICO

FILE: [Redacted]

IN RE: JUN 17 2011 [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)

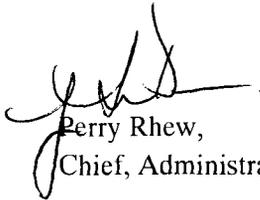
ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

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, Ciudad Juarez, 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 September 7, 2007, attempted to elude inspection at the Richford, Vermont port of entry by concealing himself in the trunk of a vehicle. The applicant was placed into secondary inspections. The applicant admitted that he knew it was illegal to attempt to elude inspection. The applicant admitted that he was seeking to enter the United States in order to attend a job interview in 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 September 7, 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 July 22, 2009, the applicant's fiancée, [REDACTED] filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant, which was approved on October 26, 2009. On July 14, 2010, the applicant filed a Form I-212, failing to indicate where he resided.¹ The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (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 reside in the United States with his U.S. citizen fiancée.

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 October 28, 2010.

On appeal, the applicant's fiancée contends that being given a "sentence" of 5 years without being able to be together and residing as husband and wife has fulfilled the obligation of "good behavior" and that the applicant should be granted "early parole" so that he may reside with her in the United States as her fiancé and husband. *See Form I-290B*, dated November 23, 2010. In support of her contentions, the applicant's fiancée submits the referenced Form I-290B, letters, medical documentation, employment documentation, recommendation letter and copies of photographs. 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

¹ The AAO notes that the copy of the Form I-212 forwarded to this office indicated that the applicant resided in Connecticut; however, in response to a request for evidence, the applicant submitted a copy of the original Form I-212 which was left blank and it appears that sections 18 and 20 were completed by an individual at the U.S. Consulate abroad. Further evidence submitted in response to the request for evidence establishes that the applicant appears to have resided in Mexico since his 2007 removal.

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.

On appeal, Ms. ■■■ requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. U.S. Citizenship & Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

The record reflects that Ms. ■■■ is a U.S. citizen by birth. The applicant and Ms. ■■■ do not appear to have any children together. The applicant is in his 30's and Ms. Coe is in her 50's.

Ms. ■■■, in her letter accompanying the appeal, states that she and the applicant have discovered the depth of their ignorance and stupidity and equates the applicant's five-year bar to a "sentence." Ms. ■■■ states that she and the applicant accept full responsibility for their actions and are not attempting to lessen the severity of their behavior. She states that she and the applicant spend the day 4,000 miles away from each and have missed being together on holidays, birthdays and her daughter's wedding. She states that her, and the applicant's, residential, professional and familial relationships have all been impacted by their actions. She states that she and the applicant are at their best when they are with each other. She states that, as an American citizen, she wishes for them to be together in the United States. She states that she and the applicant only knew that they wanted to be together and did not know that the applicant's reason for entering the United States, for a job interview, would be a factor. She states that the applicant has always worked hard and she and the applicant felt

that it was important for the applicant to secure a job in order to be a supportive husband and contributing member of society. She states that she paid a \$500 cash fine and she and the applicant have paid the price for their actions. She states that she and the applicant have been on "good behavior," which should support the applicant's early "parole." She states that she and the applicant do not have criminal records. She states that she and the applicant both work hard. She states that she is an active member in her home town church and attends one regularly when she is in Mexico. She states that the applicant does not attend church due to his work schedule. She states that the applicant is not a womanizer, but a sensitive, gentle human being. She states that the only evidence they have of rehabilitation is that they have not attempted to smuggle the applicant into the United States again. She states that they have followed all the proper steps for reentry and continue to maintain their relationship and community positions. She states that no one in Mexico is dependent upon the applicant. She states that the applicant has expressed frustration at his inability to be with her when she needs him most, such as during the three major surgeries she has undergone. She states that she experiences tremendous lulls/depression after she has seen the applicant and she returns to the United States, which has been devastating. She states that she has sought professional help with the emotional roller coaster. She states that they find it hard to finance regular visits to see each other. She states that they have also incurred extensive phone/internet costs and their lives are constantly in limbo. She states that two employers are willing to hire the applicant in the United States. She states that the applicant is a good and fair man who loves and cares for her.

A letter from [REDACTED], M.D., dated November 18, 2010, indicates that Ms. [REDACTED] has been under his care for symptoms of anxiety and depression since 2006. He states that much of the therapy has revolved around Ms. [REDACTED] long-term, long-distance relationship with the applicant. He states that Ms. [REDACTED] in spite of therapy, has continued to experience much distress and emotional hardship in regard to her relationship with the applicant.

The record does not establish that Ms. [REDACTED] suffers from a medical or psychiatric illness for which she is unable to receive appropriate treatment in the absence of the applicant or appropriate treatment in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

The record contains itineraries reflecting that Ms. Coe has visited the applicant in Mexico on four occasions since May 2010.

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 fiancée, the general hardship to the applicant and his fiancée if he were denied admission to the United States, the absence of a criminal record and the approved fiancée petition. The AAO notes that the formal engagement of the applicant, as reflected by the filing of the Form I-129F, and the filing of the visa petition benefiting him occurred after the applicant was removed from the United States. 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 elude inspection and his acknowledgement that he knew it was illegal.

The applicant in the instant case has a serious immigration violation. 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. The application remains denied.