

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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**

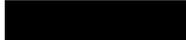
PUBLIC COPY



H4

Date: **NOV 03 2011**

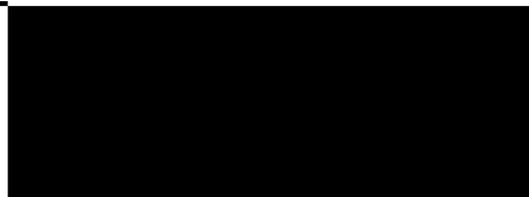
Office: LOS ANGELES, CA

FILE: 

IN RE: Applicant: 

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)

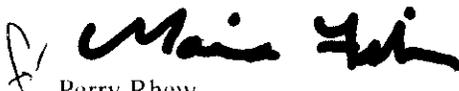
ON BEHALF OF APPLICANT:



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.

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 sustained and the application will be approved.

The record reflects that the applicant is a native and citizen of Mexico who was found inadmissible for having been deported from the United States on February 13, 1985, and reentering the United States without admission or inspection on February 15, 1985. The applicant was found 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). 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 wife.

The field office director determined that an approval of the Form I-212 was not warranted as a matter of discretion, and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated July 9, 2009.

On appeal, the applicant's counsel contends that the applicant is not subject to a permanent bar because both the deportation and reentry took place prior to April 1, 1997. The applicant's attorney asserts that the positive equities in the applicant's case outweigh his immigration violations.

The record contains briefs written on behalf of the applicant, birth certificates for the applicant's children, declarations and letters from the applicant's children, a copy of the applicant's wife's permanent resident card, a declaration from the applicant's wife, a letter from the applicant's employer, documentation regarding the applicant's son's military career and documentation submitted in conjunction with the Application to Adjust Status (Form I-485).

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 entered the United States without inspection on or about April 1, 1974 and was thereafter removed on February 13, 1985. He reentered the United States without admission or inspection on February 15, 1985. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act for having been previously deported, and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. However, the applicant's attorney correctly indicated that the applicant is not inadmissible under section 212(a)(9)(C) for reentering the United States without inspection after prior removal because his reentry occurred prior to the effective date of that provision, that is, April 1, 1997.

The record further reflects that the applicant is married to a lawful permanent resident and has two United States citizen children. One of his children was the petitioner for his approved Petition for Alien Relative (Form I-130). The record contains declarations and letters from the applicant's children which demonstrate the applicant's commitment to his family and his love of 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 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.

The record demonstrates that applicant raised two self-sufficient children. One of the applicant's children served in the United States military. The applicant has no criminal record, other than his immigration violations which occurred over twenty-five years ago. The applicant has lived in the United States for over thirty-five years and has not returned to Mexico. In his declaration, the applicant's son indicates that the applicant has nothing to return to in Mexico and the applicant's sisters live in the United States.

The applicant was ordered deported on February 13, 1985, and despite this order, he returned to the United States without admission or inspection. Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative 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 established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the applicant has met his burden and his appeal will be sustained.

ORDER: The appeal is sustained. The Field Office Director shall reopen the Form I-485, Application to Adjust Status, and continue processing the application.