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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: **APR 18 2012**

Office: SAN BERNARDINO

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,

Michael Shumway

for

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, 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.

The record reflects that the applicant is a native and citizen of Peru who was removed from the United States on August 25, 1976 for having been convicted of illegal importation of cocaine under 21 U.S.C. §§ 952, 960, and 963. He now 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 visit his ailing mother.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 application accordingly. *See Field Office Director's Decision*, dated September 27, 2011.

On appeal, counsel for the applicant asserts that the favorable factors in this case outweigh the gravity of the applicant's criminal conviction. *Statement from Counsel on Form I-290B*, dated October 24, 2011.

The record contains, but is not limited to: a brief from counsel; letters from the applicant, the applicant's mother, and the applicant's sister; medical documentation for the applicant's mother; and documentation in connection with the applicant's criminal conviction and removal. It is noted that counsel indicated on Form I-290B that he would submit a brief and/or additional evidence within 30 days. The appeal is dated October 24, 2011. However, as of the date of this decision the AAO has not received further correspondence or evidence from the applicant or counsel and the record is deemed complete. The entire record was reviewed and considered in rendering this decision.

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 on November 11, 1974 the applicant was convicted in the United States District Court, San Diego, California of illegal importation of a controlled substance, approximately 2.5 pounds of cocaine, under 21 U.S.C. §§ 952, 960, and 963. Based on this conviction, he was removed from the United States on August 25, 1976. The applicant is permanently inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act and he requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

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.

In the present matter, the applicant's criminal conviction for illegal importation of cocaine constitutes a significant negative factor that weighs against approving his application for permission to reapply for admission into the United States. It is noted that this offense renders him permanently inadmissible for the purpose of admission as a lawful permanent resident under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(II), 1182(a)(2)(C), for having been convicted of violating a law relating to a controlled substance, and U.S. Citizenship and Immigration Services' (USCIS) reasonable belief that he has been involved in the illicit trafficking of a controlled substance. The applicant seeks admission for a temporary period as a nonimmigrant, and for this purpose he is eligible for consideration for a waiver of his inadmissibility under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act pursuant to section 212(d)(3) of the Act. However, the gravity of his offense must be outweighed by substantial positive factors in order to approve the present Form I-212 application.

In a statement dated April 23, 2011, counsel for the applicant provided that the applicant seeks to visit his 83-year-old aging and sickly mother. The record contains medical documentation for the applicant's mother, including a letter from a physician, [REDACTED] who has cared for her since September 2008. [REDACTED] listed conditions faced by the applicant's mother, and noted that her "health status is very delicate and at high risk for complications." [REDACTED] indicated that he does not recommend that the applicant's mother travel to Peru "as this may affect her health condition." A letter from [REDACTED] states that as of November 2, 2007, the applicant's mother was unable to walk, she was confined to a wheelchair at home, and she was dependent on the

applicant's sister for transportation. The AAO acknowledges that the applicant's mother's health status is fragile, and she is unlikely to travel to Peru. Denial of the present application is likely to result in the applicant's continued separation from his ailing mother, and this fact weighs in favor of approving the application.

Counsel asserted that the applicant's conviction occurred when he was very young. The AAO acknowledges that the applicant's criminal conduct occurred when he was age 21, and the record does not contain documentation to show that he engaged in further criminal conduct after that time, in approximately 40 years. However, it is noted that the applicant has not provided a police certificate or other documentation from Peru showing whether criminal records exist in the country pertaining to him, and the AAO is unable to confirm that he in fact has not engaged in criminal acts since July 1972 and his removal from the United States in August 1976. Although counsel asserted that the applicant is remorseful for his criminal conviction, the applicant attributed his conviction to poor representation and stated that he "was not guilty."

Counsel asserted that the applicant has shown positive character since his conviction. Counsel provides that the applicant is an honest, hard-working person who has established a very successful business in Peru. The record contains documentation that supports the applicant's claimed business activities, although much of this documentation is in a foreign language without a certified English translation. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims, and the evidence is not accorded any weight in this proceeding. *See* 8 C.F.R. § 103.2(b)(3). Counsel noted that the applicant has obeyed the conditions imposed on him upon deportation, and that he has never attempted to enter the United States illegally. Nothing in the record contradicts this assertion.

The AAO has examined the numerous letters in support of the applicant's admission to the United States that discuss his business achievements, personal integrity, and family stability in Peru that has continued for a lengthy duration.

Considering the totality of evidence in the record, the AAO finds that the positive factors in this case outweigh the negative factor. Although the applicant's criminal act was very serious, the offense was committed at a young age, and the record contains ample support to show that he has rehabilitated himself in the approximately 35 years since he was removed from the United States. The applicant's mother's precarious health, advanced age, and inability to travel abroad merits permitting him to visit her in the United States for a temporary period. Based on the foregoing, the applicant has shown that he warrants a favorable exercise of discretion.

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 appeal will be sustained.

ORDER: The appeal is sustained.