

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

**PUBLIC COPY**

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



44

Date: JUN 28 2012

Office: VIENNA

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

- (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 attempted to enter the United States with an Italian passport that did not belong to him in April 2001, was ordered removed on February 12, 2002 and failed to depart until 2008. He is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act for having been ordered removed. The applicant requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The record further reflects that the applicant is married to a U.S. citizen. The applicant's wife's Form I-130 petition for the applicant was approved in October 2008. Affidavits from the applicant's wife and letters from her friends demonstrate the applicant provides emotional and psychological support to her.

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.

The primary favorable factors in this case are the applicant's responsibility to his family in the United States and the hardship they are experiencing without him. The record indicates that the applicant's spouse requires the applicant's psychological and emotional support, because she has a history of psychological issues that follow her witnessing the murder of her grandfather in [REDACTED] and the suicide of her ex-boyfriend in the United States. In addition to providing emotional and psychological support to the qualifying spouse, the applicant financially assisted her parents before his departure from the United States. Additionally, the applicant has no criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's use of an [REDACTED] passport not belonging to him, his removal order, his accrual of unlawful presence, and his failure to timely depart the United States.

The AAO notes that the applicant received a removal order in 2002 and that he married in 2007, after the completion of his removal proceedings. As such, the AAO acknowledges that most of the favorable factors discussed above constitute "after-acquired equities," and accords them diminished

weight. Nonetheless, the positive factors are significant. 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.