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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: **MAR 21 2012**

Office: PHOENIX

FILE: [REDACTED]

IN RE: Applicant: [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:

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,

for Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Phoenix, Arizona, 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 Mexico who was removed from the United States, most recently on January 23, 1992. He was paroled back into the United States on June 3, 1994. He has not obtained permission to reapply for admission to the United States. The applicant is 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 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 reside in the United States with his six U.S. citizen children and lawful permanent resident parents.

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 may 25, 2010.

On appeal, counsel for the applicant asserts that the field office director abused his discretion in denying the application, and that the applicant has shown that the positive factors in this case outweigh the negative factors such that the applicant warrants a favorable exercise of discretion. *Brief from Counsel*, dated July 5, 2010.

The record contains, but is not limited to: a brief from counsel; documentation relating to the applicant's employment, income, and taxes; documentation regarding the applicant's U.S. citizen children; statements from the applicant, one of his daughters, and the mother of one of his daughters; medical documentation for the applicant, one of his daughters, and the mother of one of his daughters; reports on conditions in Mexico; letters from the applicant's church and others in support of his presence in the United States; and documentation regarding the applicant's criminal convictions. 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 the applicant first entered the United States without inspection at approximately age 13 or 14, and he has been removed on three occasions, most recently on January 23, 1992. He was paroled into the United States on June 3, 1994, but he has not obtained permission to reapply for admission to the United States at any time. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) 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.

The applicant's history of violating U.S. immigration law serves as a strong negative factor in this case, as he repeatedly entered without inspection and remained for lengthy periods without a lawful status until he was removed. The record also shows that the applicant has been convicted of approximately seven offenses of driving under the influence of alcohol, in 1985, 1990, and 1991. These offenses raise serious concerns regarding the applicant's regard for the laws of the United States, and call into question whether he poses a continuing risk to others in the country.

The record presents significant positive factors including that the applicant has strong ties to the United States such as his six U.S. Citizen children and lawful permanent resident parents. The record shows that one of the applicant's daughters has been diagnosed with type II diabetes and hyperglycemia, and she states that her family depends on the applicant as their primary source of income. She further states that the applicant assists her in caring for her U.S. citizen children, that he is close with his grandchildren, and that they would suffer hardship should they become separated. The applicant also suffers from significant medical conditions that require medical supervision and medication, including diabetes mellitus, hypertension, GERD (gastro-esophageal reflux disease), and chronic sinusitis, and he would likely face challenges maintaining the continuity of his care should he return to Mexico. The applicant has engaged in consistent employment in the United States for over 20 years. While this employment has been without authorization, it shows that the applicant has

a propensity to work to support himself and his family. The record also contains indications that the applicant has engaged his community through religious activities and participation with his Native American Yaqui community.

The applicant's convictions for driving under the influence of alcohol occurred over 20 years ago, and the record does not show that he has engaged in any criminal activity since that time. The AAO finds this fact, combined with the applicant's established pattern of positive conduct, to be sufficient evidence that he has rehabilitated himself. The record supports that he long ago discontinued his pattern of driving under the influence of alcohol, and that he no longer has a propensity to engage in criminal acts.

The AAO observes that the applicant's violation of U.S. immigration law began when he was a minor, at age 13 or 14, and his conduct at that young age is not deemed indicative of his present character as a 55-year-old adult. He was paroled into the United States on June 3, 1994 to continue litigation, and the record does not support that he has violated U.S. immigration law in approximately 18 years. However, the applicant's approximately 17-year pattern of disregarding U.S. immigration law once he reached the age of majority ended with his removal and subsequent parole shortly after. The strong positive factors in this case, combined with the applicant's demonstrated rehabilitation of his criminal past, outweigh the negative weight given to his violation of immigration law. 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.