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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

[REDACTED]

Date: **MAR 26 2012**

Office: COLUMBUS

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:

[REDACTED]

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,

*for*  
Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Columbus, Ohio, 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 record reflects that the applicant is a native and citizen of Israel (Palestinian Territory of the West Bank) who entered the United States on March 29, 2006 with a nonimmigrant F-1 student visa to attend a school in Minnesota. The applicant did not attend this school, and on February 11, 2008, an immigration judge ordered the applicant removed from 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 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 spouse and child.

The field office director determined that the applicant failed to demonstrate that his favorable equities outweigh his unfavorable factors, and that consent to reapply for admission was not warranted, and therefore denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated August 25, 2011.

On appeal, counsel contends that the applicant would experience exceptional hardship due to the separation of family, that the applicant did pay income taxes during periods of his unauthorized employment, and that the applicant's wife and son would experience medical hardship should the waiver be denied. *See Letter in Support of Appeal*, dated September 17, 2011.

The record includes, but is not limited to, marriage and birth certificates, statements from the applicant's spouse, letters from physicians and medical records concerning the applicant's son's medical condition, letters of reference from relatives and friends of the applicant's spouse, and copies of federal income tax returns. The entire record was reviewed and considered in rendering the decisions 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 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 was granted an F-1 nonimmigrant student visa on March 14, 2006 at the [REDACTED] in order to attend the [REDACTED] in [REDACTED] Minnesota. The applicant submitted a visa application indicating that his uncle and his brother would be paying for his trip. The applicant entered the United States on March 29, 2006. However, the applicant did not attend this school, and instead relocated to Columbus, Ohio where his half-brother [REDACTED] resides. The applicant states that the reason he did not attend the school was due to his father's death on March 31, 2006.

In Columbus, Ohio, the applicant sought and procured unauthorized employment. On January 26, 2007, the applicant married his first wife. On February 14, 2007, the applicant was issued a Notice to Appear before an immigration judge for failure to maintain his student visa status and for being employed without authorization. On February 23, 2007, the applicant's first wife filed an I-130 Immigrant Visa Petition, which was subsequently approved without interview on June 1, 2007. Following proceedings before an immigration judge, on February 11, 2008, the immigration judge ordered the applicant removed from the United States. On April 7, 2008, the applicant's first wife submitted a letter to withdraw the Form I-130, which was revoked in a decision dated April 29, 2008, effective the date of approval (June 1, 2007). The applicant and his first wife were subsequently divorced on June 26, 2008.

On August 28, 2008, the applicant married his second wife. The applicant's second wife filed Form I-130 Immigrant Visa Petition on November 10, 2008, which was approved on March 26, 2010. On October 18, 2010, the applicant, through his attorney, filed a Motion to Reconsider before the Board of Immigration Appeals (BIA). The BIA denied this motion on April 29, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As discussed previously, the applicant was ordered removed from the United States on

February 11, 2008, and his removal order will render him inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act upon his departure from the United States, and he will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant may apply for conditional approval of Form I-212 under 8 C.F.R. § 212.2(j) before departing the United States, and the approval of the Form I-212 under these circumstances is conditioned upon the applicant's departure from the United States. Accordingly, the AAO will evaluate whether the applicant merits a 212(a)(9)(A)(iii) waiver of inadmissibility as a matter of discretion.

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 [REDACTED] 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 favorable factors in this case are as follows:

The applicant has a U.S. citizen wife in the United States, and is the beneficiary of an approved Form I-130 Immigrant Visa Petition.

The applicant's son was born with a cleft lip, and underwent operative treatment on May 23, 2011. According to a doctor's statement, it is important that the applicant is able to participate in his son's care for the well-being of his child. See *Letter of [REDACTED]* dated January 13, 2011.

The record includes copies of federal income tax returns indicating that the applicant did pay income tax on income generated from his unauthorized employment in the United States.

In addition, there is no evidence of a criminal record. The record includes several letters of reference from the relatives and friends of the applicant's spouse.

The unfavorable factors in this case are as follows:

The applicant entered the United States ostensibly for the purpose of attending the [REDACTED] in [REDACTED]. The applicant never attended this school. The applicant has testified that the reason for not attending this school was because his father was to provide financial support for his schooling in the United States, but his father died shortly after his arrival in the United States. However, on the applicant's visa form submitted to obtain the F-1 nonimmigrant student visa, the applicant indicated that his uncle and his brother would provide the financial support for his trip.

On appeal, the applicant's current spouse states that upon learning of his father's death, the applicant came to Ohio where he has a "relative." See *Statement of [REDACTED]* dated September 26, 2011. However, this relative is never identified as the applicant's half-brother. While the record includes several letters of reference from relatives and friends of the applicant's spouse, noticeably absent is an affidavit or statement from the applicant's half-brother, or any of the friends or relatives of the applicant. In addition, the record contains no affidavit or statement from the applicant expressing any remorse for his violations of U.S. immigration laws.

After relocating to Ohio, the applicant engaged in unauthorized employment.

The applicant was married on two occasions to United States citizens, and each spouse filed a Form I-130 Immigrant Visa Petition on the applicant's behalf. However, both immigrant visa petitions were filed after the applicant was placed into removal proceedings.

The applicant's attorney contends that the applicant's spouse has had past problems with depression. *See Letter in Support of Appeal*, dated September 17, 2011. However, the record does not include any medical evidence regarding the applicant's spouse's prior psychological conditions. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, as noted above, it is proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation. *Ghassan v. INS*, 972 F.2d 631, 634-35 (5<sup>th</sup> Cir. 1992).

The applicant in the instant case has multiple immigration violations. 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.