



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: APR 04 2013

OFFICE: BOISE

FILE: [REDACTED]

IN RE: [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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Boise, Idaho, denied the Application for Permission to Reapply for Admission into the United States after Deportation and Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who is seeking conditional approval of permission to reapply for admission into the United States pursuant to title 8 Code of Federal Regulations section 212.2(j). After departing the United States, the applicant will be 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 children.

The director determined that the unfavorable facts in the applicant's case outweigh the favorable factors and denied the Form I-212 accordingly. *See Decision of the Field Office Director*, dated June 20, 2012.

On appeal, counsel asserts the director's decision was flawed and the balance of favorable to unfavorable factors weighs in the applicant's favor. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received July 23, 2012, *and counsel's brief*.

The record contains, but is not limited to: Form I-290B and counsel's brief; Forms I-130, Petition for Alien Relative (Form I-130); Form I-485, Application to Register Permanent Residence or Adjust Status; letters from the applicant's spouse, children, family, friends, and community members; birth and marriage certificates; financial documents; photographs; and country-condition reports about Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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 in April 1993 and was granted voluntary departure by an immigration judge on June 18, 1996; he was ordered to depart the United States by September 19, 1996. The applicant remained in the United States. His U.S. citizen spouse petitioned for him as an alien relative on three occasions by filing Form I-130. In January 2009 Immigration and Customs Enforcement agents located him at his place of work and placed him in proceedings. The applicant filed for a stay of deportation as well as for his case to be reopened. An immigration judge and the Board of Immigration Appeals (the Board) denied the motion to reopen. The immigration judge denied the stay of deportation but found exceptional circumstances to excuse the applicant's failure to depart the United States in 1996. The director granted a reinstatement of the voluntary departure period, requiring the applicant to depart the United States by November 13, 2012. Therefore, the applicant's departure from the United States will result in his inadmissibility under 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 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 of discretion.

The favorable factors in the present case are the applicant's U.S. citizen spouse and four U.S. citizen children ages two, thirteen, sixteen and seventeen; his extended family ties; his involvement in his children's schools and community; his stable employment; his financial responsibilities as the primary income contributor to their household; his good moral character; his length of residence in the United States; and his lack of a criminal record. The record includes over 45 letters from the applicant's family, friends, neighbors, employer, and their children's teachers and principal attesting to the applicant's responsible nature and the hardship to his family and community should the applicant's application be denied. The unfavorable factors in this case are the applicant's immigration violations of entering without inspection over 20 years ago at the age of 19; working without employment authorization; and failing to depart the United States after receiving his voluntary departure order.

The applicant's actions in this matter cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that 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.