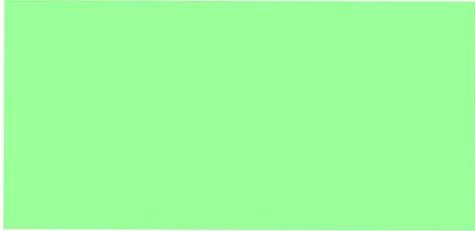


(b)(6)

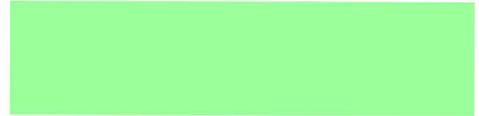
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



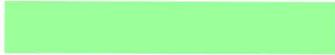
U.S. Citizenship  
and Immigration  
Services



Date: **APR 17 2013** Office: LIMA, PERU



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212) was denied by the Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant is a native of Brazil and a dual citizen of Brazil and Italy who was found inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), after being removed from the United States. 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 U.S. citizen spouse.

The Field Office Director determined that the applicant was ineligible as a matter of discretion, and denied the applicant's Form I-212 accordingly. *Decision of the Field Office Director*, dated May 8, 2012.

On appeal, the applicant, through counsel, contends that the Field Office Director's decision "is based upon errors of law and fact." *Counsel's appeal brief, attached to Form I-290B, Notice of Appeal or Motion*, dated June 6, 2012.

The record includes, but is not limited to, counsel's briefs; statements from the applicant, his wife, and family and friends; medical and psychological documents for the applicant's wife and his in-laws; financial documents; household and utility bills; employment documents for the applicant and his wife; school records for the applicant's wife; photographs; country-conditions documents on Brazil; criminal documents concerning the applicant<sup>1</sup>; and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(A) Certain alien previously removed.-

....

(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 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

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<sup>1</sup> The AAO notes that on February 1, 2010, the applicant was charged with breaking and entering and destruction of property; however, the charges were dismissed on June 15, 2010.

the case of an aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the [Secretary] has consented to the aliens' reapplying for admission.

In the present application, the record indicates that on November 12, 2008, the applicant entered the United States under the Visa Waiver Program, by presenting his Italian passport. He had authorization to remain in the United States for 90 days, but he failed to depart when his authorization expired. On April 28, 2010, the Field Office Director, Immigration and Customs Enforcement, Boston, Massachusetts, ordered the applicant removed from the United States. He was removed on October 5, 2010. As such, the applicant is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act for having been removed from the United States.

In his statement dated May 23, 2012, the applicant states that his wife is afraid to leave the apartment and has panic attacks. In her affidavit dated February 4, 2012, the applicant's wife states she has panic attacks almost daily and sometimes she does not even get out of bed because she is depressed and feels hopeless and alone. Medical documentation in the record from Brazil establishes that the applicant's wife is suffering panic attacks, and she has been prescribed medication. The applicant states his wife lives in "constant depression" and she misses her parents. In her affidavit dated May 23, 2012, the applicant's wife states in Brazil, she suffered from major depression, anxiety, insomnia, panic attacks, and suicidal thoughts, but because she is unemployed she cannot afford health insurance, medication, or treatment. Additionally, she claims that when the applicant was detained for six months, she was suicidal, her hair fell out, and she lost weight. She also dropped out of college because of the applicant's immigration situation, her health conditions, and inability to concentrate. She states healthcare in Brazil is inadequate and she fears for her health. In a psychological evaluation dated July 26, 2011, [REDACTED] states that although the applicant's wife joined the applicant in Brazil, her depression and anxiety symptoms have persisted for over a year; the applicant's wife's symptoms are related to her being unable to work or attend college and to her separation from her family in the United States. Additionally, she states the applicant's wife suffers from serious medical conditions, including recurrent urinary tract infections, but she cannot afford treatment.

The applicant states his father-in-law suffers from health problems, but his mother-in-law's recent diagnosis of breast cancer is the "greatest worry" for their family. Medical documentation in the record establishes that the applicant's father-in-law suffers from aortic valve disease and depression, and his mother-in-law has breast cancer. The applicant's wife states she has always cared for her parents, and now that her mother is undergoing treatment for breast cancer, it is difficult for her to be separated from them. She states her father suffers from two heart conditions, and she used to make his doctor's appointments and call in his prescriptions. She worries that while taking care of her mother and their family business, her father will not take care of himself. The applicant's in-laws state the applicant's mother-in-law will undergo treatment for her breast cancer which includes chemotherapy,

surgery, and radiation, and they need their daughter to help them. In their letter dated October 27, 2011, social worker [REDACTED] state the applicant's mother-in-law was diagnosed with breast cancer on October 14, 2011, she will likely undergo treatment for about a year, and it is important for her to have as much family support as possible.

The applicant's wife states they are suffering financially in Brazil because they have been unable to find employment and depend on assistance from the applicant's parents. [REDACTED] reports that the applicant's wife taught English for three months, but it was only a temporary position. The applicant's wife states she cannot afford to travel to the United States to visit her family or repay her debts. She claims that her debts include \$14,000 in student loans, \$6,000 for her repossessed car, and \$1,515 to her college. Documentation in the record corroborates the applicant's wife's claims. The applicant's wife states she was a "top" college student in the United States and she would like to go back to school, but the educational system in Brazil is not as good as in the United States. Additionally, the applicant's wife states she worked part-time in her family's business and since she has been in Brazil, the business has suffered. The applicant's in-laws state they relied on their daughter to help them with their business because of her English language skills, and she still helps them from Brazil by answering e-mails from clients. Further, the applicant's wife states Brazil is dangerous. Dr. Carey reports that according to the applicant's wife, she feels unsafe in Brazil, and if she left the applicant in Brazil, she would worry about him. Moreover, counsel states the applicant's wife has resided in the United States since she was twelve years old, all of her family lives within minutes of each other, and they are "extremely close." The applicant's wife states she has no ties to Brazil.

Regarding the hardship the applicant's wife will face, the AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements that must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's wife, but her hardship will be just one of the determining factors.

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 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 Seventh 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 AAO finds that the applicant's failure to depart the United States when his authorization expired, unlawful presence, unauthorized employment, and removal from the United States are unfavorable factors.

The favorable factors in this matter are the applicant's family ties to his U.S. citizen spouse, hardship to his spouse, his spouse's emotional issues, and letters of support. Despite the diminished weight given to the after-acquired equities, the AAO finds that the favorable factors 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, the AAO concludes that the applicant has established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The application is approved.