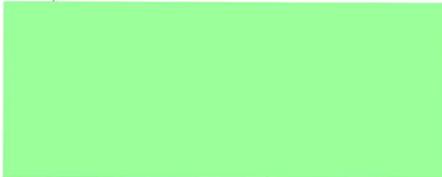




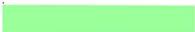
U.S. Citizenship  
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Services

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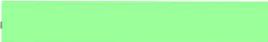


DATE: FEB 01 2013

Office: ROME, ITALY

FILE: 

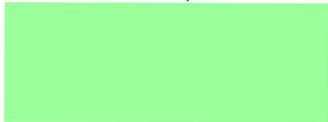
IN RE:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Tunisia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. 1182(a)(9)(A), as an alien who was ordered removed and seeks admission within ten years of such removal, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year or more. The applicant is the spouse of a U.S. citizen. He seeks Permission to Reapply for Admission into the United States after Deportation or Removal pursuant to section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii), and a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(9)(B)(v), in conjunction with an immigrant visa application, in order to obtain admission to the United States as a lawful permanent resident.

The Field Office Director determined it would serve no purpose to approve the applicant's Form I-212, since the applicant's Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act had been denied: *See Decision of Field Office Director*, dated March 22, 2011. He denied the Form I-212 accordingly.

On appeal, counsel contends that the director abused discretion in denying the application, as the positive discretionary factors outweigh the adverse factors. *See Counsel's Brief*, dated July 23, 2010.

The record of evidence includes, but is not limited to, counsel's brief; the applicant's statement; numerous letters and statements of the applicant's U.S. citizen wife; statements of the applicant's wife's family members; applicant's birth certificate; physician's letters and medical records for the applicant's wife; the applicant's immigration court records; and the applicant's criminal records. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

(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

(b)(6)

- (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, the [Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The record indicates that the applicant was last admitted to the United States on or about December 4, 1997 as a B-2 nonimmigrant visitor for an authorized period ending June 3, 1998. He thereafter remained in the United States beyond the authorized period of stay. The record shows that a Notice to Appear, placing the applicant into removal proceedings, was filed with the Immigration Court on February 13, 2003. On May 11, 2006, the Immigration Judge was ordered removed *in absentia*, after failing to appear. A subsequent motion to reopen was denied by the court on July 27, 2007. The applicant was located and arrested by Immigration and Customs Enforcement (ICE) officers and subsequently removed from the United States on or about November 5, 2007.

As the applicant has not disputed inadmissibility under section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A), and the record does not show that finding of inadmissibility to be in error, the AAO will not disturb the determination.

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 for Admission into the United States after Deportation or Removal: 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 United States. 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.*

The Commissioner, in *Matter of Lee*, 17 I&N Dec. 275, 278 (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. *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 (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.

In the present case, however, the AAO notes that the Field Office Director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal, as well as the applicant's Form I-601, Waiver of Grounds of Inadmissibility. The AAO has dismissed an appeal of the denial of the applicant's Form I-601 in a separate decision. Pursuant to *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. Accordingly, as the applicant here is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and the appeal of the denial of his waiver application under section 212(a)(9)(B)(v) has been dismissed, no purpose would be served in granting the applicant's Form I-212. Accordingly, the appeal is dismissed.

**ORDER:** The appeal is dismissed.