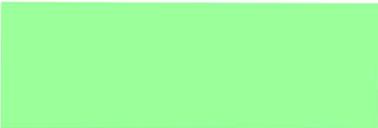




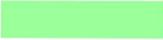
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE **FEB 01 2013**

Office: CHICAGO, IL

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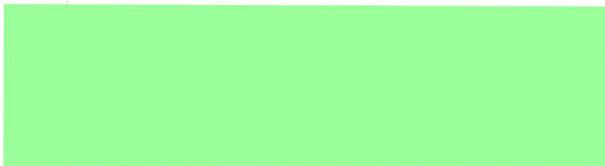
IN RE:

Applicant: 

APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 any motion to 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 Field Office Director, Chicago, Illinois, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The matter 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 Mexico. He was removed from the United States on June 24, 1975, and he reentered without inspection on an unknown date prior to July 6, 1978. He was found to 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 U.S. citizen wife, mother, children, and siblings.

The field office director determined that the applicant's negative factors outweigh his positive factors and a favorable exercise of discretion is therefore not warranted, and she denied the Form I-212 application accordingly. *Field Office Director's Decision*, dated May 24, 2012.

On appeal, counsel asserts that the applicant's positive factors outweigh his negative factors such that a favorable exercise of discretion is warranted. *Brief in Support of Appeal*, undated.

The record includes, but is not limited to, counsel's brief; documentation in connection with the applicant's immigration history; documentation of the applicant's criminal history; tax records for the applicant's family; birth and immigration records for the applicant's family members; statements from the applicant and his spouse; and statements in support of the applicant's admission to the United States. 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

(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 territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant was admitted to the United States as a lawful permanent resident on May 25, 1956. On June 16, 1969, the applicant was placed into removal proceedings based on a finding that he had committed two crimes involving moral turpitude. On May 13, 1974, an immigration judge ordered the applicant removed from the United States, and he was removed to Mexico on June 24, 1975. The applicant reentered the United States without inspection on an unknown date, but the record supports that this entry occurred prior to July 6, 1978, the date he was arrested for forcible rape. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act and 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.

Where an applicant is seeking discretionary relief from removal or deportation and the courts are required to weigh favorable equities or factors against unfavorable factors, many have repeatedly upheld the general principal that less weight is given to equities acquired by an alien after an order of deportation or removal has been issued. The AAO notes that the applicant's Form I-212 involves a similar weighing of equities or favorable factors against unfavorable factors in order to determine whether to grant discretionary relief.

In *Garcia-Lopez v. INS*, 923 F.2d 72 (7th Cir. 1991), for example, the Seventh Circuit Court of Appeals (Seventh Circuit) reviewed a Board of Immigration Appeals (Board) denial of an alien's request for discretionary voluntary departure relief. The Seventh Circuit found that the Board's denial rested on discretionary grounds, and that the Board had weighed all of the favorable and unfavorable factors and stated the reasons for its denial of relief. The Seventh Circuit affirmed the general principle that less weight may be accorded to equities acquired after an order of deportation is issued, and the Seventh Circuit concluded that the Board had not abused or exercised its discretion in an arbitrary or capricious manner.

In *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals (Fifth Circuit) reviewed a section 212(c), waiver of deportation, discretionary relief case that involved the balancing of favorable and unfavorable factors. The Fifth Circuit found no abuse of discretion in the Board's weighing of equitable factors against unfavorable factors in the alien's case, and the Fifth Circuit affirmed the principle that as an equity factor, it is not an abuse of discretion to accord diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien spouse's possible deportation.

The AAO finds that the above-cited precedent 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 include the presence of the applicant's U.S. citizen spouse (who he has been married to for approximately 40 years), mother, three adult children, and siblings; payment of taxes; an approved Form I-130 petition; good character as detailed in statements of support; and his lack of a criminal record in approximately 37 years. The applicant's spouse claims that she has nonalcoholic steatohepatitis and is in the process of being put on a wait list for a liver transplant; the applicant suffers from high blood pressure and cholesterol, he has been hospitalized for severe blood clots and he cannot see out of his left eye; and they would lose money on the sale of their house, she has spent all of her life in the United States and there is no opportunity in Mexico. The record includes medical documents, but they do not reflect that the applicant's spouse is in the process of being put on a waiting list for a liver transplant or that the applicant has medical issues.

The AAO finds that the unfavorable factors in this case include the applicant's removal on June 24, 1975; his entry without inspection after his removal; his period of unauthorized stay; and his unauthorized employment. In addition, he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude, and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking a benefit under the Act by making a willful misrepresentation.

The record reflects that the applicant was arrested between 1966 and 1975 for crimes including criminal trespass of a vehicle, theft, grand theft, grand theft auto, burglary, criminal damage to property, robbery, forcible rape, aggravated battery, unlawful use of a weapon, failure to register a firearm, and possession of marijuana. The record lacks dispositions for many of these charges, yet sufficient evidence shows that he was convicted of at least two theft offenses and one battery

offense. Without adequate evidence to support the positive factors claimed by the applicant, and without complete records of his criminal history that involved serious charges such as forcible rape and battery, the AAO is unable to accurately assess the alleged equities or exercise favorable discretion. Thus, the applicant has not established by supporting evidence that the favorable factors in this matter outweigh the unfavorable ones.

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 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.