

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

(b)(6)

[Redacted]

MAY 24 2013

Date:

Office: PHOENIX

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 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 in accordance with the instructions on 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,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Phoenix, Arizona, 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 India who entered the United States on September 18, 1994 with a valid nonimmigrant F-1 student visa. On August 3, 2004, the applicant was 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.

The Field Office Director determined that the applicant had no favorable equities, and therefore the favorable factors could not outweigh his unfavorable factors. He denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated December 10, 2012.

On appeal, counsel contends that the Field Office Director made mistakes of law and fact in this case. Counsel highlights as positive factors the applicant's intent to help the American economy by working, his relationships with his future employer and his church community, and hardship to his lawful permanent resident wife. *See Brief in Support of Appeal*, dated January 9, 2013.

To support her assertions, counsel submits copies of previously issued AAO decisions. The AAO notes that only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on U.S. Citizenship and Immigration Services (USCIS) officers. The decisions submitted by counsel are unpublished and not designated as precedent decisions. The findings made in the other AAO decisions, therefore, have no binding precedential value for purposes of the applicant's case.

The record includes, but is not limited to: a brief in support of the appeal; statements from the applicant and the applicant's spouse; a statement from the applicant's prospective employer; financial documentation; medical documentation for the applicant; letters of reference; and documentation regarding the applicant's arrests. 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 admitted into the United States on September 18, 1994, as a nonimmigrant student with an F-1 visa. He withdrew from his university on April 14, 1995. The applicant subsequently departed the United States on November 26, 1995, and traveled to England. The applicant reentered the United States on December 5, 1995, and was again admitted as a nonimmigrant F-1 student.

The record indicates that the applicant procured unauthorized employment as a computer technician and, while contracted to work for the [REDACTED], he used a company stamp to send a fake employment offer to an individual in Australia on April 10, 1997.¹ The applicant's employment was terminated on April 22, 1997.

The record includes evidence that the applicant was cited for trespassing three times in Las Vegas between July 1997 and March 1998 at the [REDACTED]. During his last arrest, documentation in the record shows that the applicant possessed one false photo ID card, one bank card in the name of another person, and 18 slot cards under various names issued by casinos in Las Vegas.

¹ The record indicates that on August 11, 1998 before an immigration judge, in sworn testimony, the applicant said the letter was intended as a joke. The AAO notes that the applicant was not found to be inadmissible under section 212(a)(6)(E)(i) of the Act for having knowingly encouraged, induced, assisted, abetted or aided another alien to enter or to try to enter the United States in violation of the Act.

The applicant was served with a Notice to Appear before an immigration judge on March 31, 1998. The applicant applied for relief in the form of asylum and withholding of removal. On August 11, 1998, the immigration judge denied the applicant asylum and withholding of removal. The applicant's appeal and motion to reopen were denied by the Board of Immigration Appeals. Petitions for review filed with the U.S. Court of Appeals for the Ninth Circuit were dismissed on March 17, 2000 and March 9, 2004. The applicant was removed to India on August 3, 2004. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant does not contest his inadmissibility.

The record further reflects that the [REDACTED] South Carolina, filed a Form I-140, Immigrant Petition for Alien Worker (Form I-140), on the applicant's behalf, which was approved on November 13, 2002. A related Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), was found to be abandoned and consequently denied in July 2010.

The applicant married an Indian national on March 6, 2007 in Canada, and the applicant's spouse became a lawful permanent resident of the United States on March 30, 2010.

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 7th 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.

The favorable factors in this case are as follows:

- The applicant's lawful permanent resident wife lives in the United States.
- The applicant is the beneficiary of a Form I-140, showing a need for his services in the United States.
- The applicant's relatives and friends have submitted several letters of reference describing his own hardship and need for emotional support.

The unfavorable factors in this case are as follows:

- The applicant remained in the United States though he had no lawful immigration status after he withdrew from his university on April 14, 1995.
- The applicant used his F-1 nonimmigrant student visa to re-enter the United States on December 5, 1995. While the applicant had enrolled at another school, the [REDACTED] information from that university's Division of Student Affairs indicates that the applicant withdrew after his first semester in the fall of 1995 and has not registered at the university since then.
- The applicant procured unlawful employment in Las Vegas in 1997, and during this employment, he used a company stamp without authorization to fax a false job offer to someone outside the United States, which potentially would have been used by that person to unlawfully enter the United States.

- The applicant was arrested three times for trespassing at the [REDACTED]. The applicant was found to be in possession of a false photo ID, a bank card that did not belong to him, and 18 casino slot cards that did not belong to him.
- The record indicates that the applicant has used three different dates of birth: October 5, 1971, May 15, 1973, and May 15, 1977. The applicant's passports show his date of birth as October 5, 1971. Copies of an Indian birth certificate show his date of birth as May 15, 1973. The applicant submitted a "[REDACTED]" birth certificate with his Form I-485, which indicates his date of birth as May 15, 1977. The applicant provided no explanation for submitting documentation reflecting three different dates of birth to travel and to apply for U.S. immigration benefits.

The applicant's attorney contends that the applicant's spouse's own mental health has been affected due to her concern for the applicant, who suffers from anxiety, depression, and obsessive-compulsive personality disorder. See *Brief in Support of Appeal*, dated January 9, 2013. However, the record does not include medical evidence to support the contention that the applicant's spouse is experiencing psychological hardship condition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

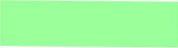
The applicant's attorney further contends that the applicant's spouse will suffer financial hardship if the applicant's application is not approved, as she cannot continue to pay his bills in India and support herself in the United States. Financial documentation in the record indicates that the applicant's spouse is gainfully employed, and in 2008, she received an income of \$68,000. The evidence submitted is insufficient to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence.

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 (5th Cir. 1992). In this case the applicant was removed in 2004 and had lived in India for nearly three years before he married his spouse in Canada. The AAO therefore accords factors related to his spouse diminished weight.

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

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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.