



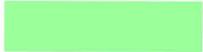
U.S. Citizenship  
and Immigration  
Services

(b)(6)

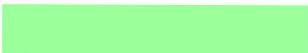


Date: **NOV 27 2013**

Office: ADMISSIBILITY REVIEW OFFICE

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Admissibility Review Office, 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 of Mexico and citizen of Canada who was ordered removed from the United States on July 6, 2006 and February 18, 2007. The applicant is inadmissible to the United States 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 enter the United States as a non-immigrant visitor.

The Director determined that the applicant's adverse factors outweigh his favorable factors, and he denied the Form I-212 accordingly. *Director's Decision*, dated June 10, 2013.

On appeal, the applicant asserts that he has no intentions of harm or malice towards the United States, he regrets past incidents, and he apologizes for confusion and misunderstandings he may have caused.

The record includes, but is not limited to, the applicant's statement, the applicant's sister's statement, letters and statements explaining the applicant's actions and good character, a document in Spanish<sup>1</sup> and the applicant's immigration records. The entire record, other than the document in Spanish, 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

---

<sup>1</sup> The AAO notes the document in Spanish, but it will not be considered as it does not include a translation, as required by the regulation at 8 C.F.R. § 103.2(b)(3).

- (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 refused admission to the United States and found inadmissible under section 212(a)(6)(E)(i) of the Act on May 5, 1995, for having assisted his sister to enter the United States illegally the previous day. The applicant subsequently was ordered removed under section 235(b)(1) of the Act on July 6, 2006, for not possessing a requisite document to enter the United States and not receiving permission to enter the United States after he had been found inadmissible for smuggling. In his July 6, 2006 sworn statement, the applicant states that he and Jacob Unger smuggled his sister into the United States in 1995. The applicant again was ordered removed under section 235(b)(1) of the Act on February 18, 2007, because he was found inadmissible under section 212(a)(6)(C)(i) of the Act, for attempting an entry into the United States while knowing he was barred for five years under his previous expedited-removal order. The applicant states in a February 18, 2007, sworn statement that he knew it was against the law to try to enter the United States before his five-year bar to admission expired but because he still had a valid visa, he thought his record was clean and that he could use it. The applicant, moreover, claims to have entered the United States lawfully many times over several years after the 1995 incident and before his 2006 expedited-removal order. The record indicates that the applicant sought admission to the United States in 2007 by presenting a visa issued in 2002. Because he was ordered removed, the applicant is 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.<sup>2</sup>

The applicant's sister states that the family planned a trip from Mexico via the United States to Canada to visit relatives; the applicant did not assist her in any way; she knew that she was going to

---

<sup>2</sup> In addition to requiring approval of his Form I-212, the applicant also needs to obtain an approval of Form I-192, Application for Permission to Enter as a Nonimmigrant (Form I-192), due to his inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(6)(E)(i) of the Act. The record shows the applicant's Form I-192 was denied on June 10, 2013, but it is unclear whether the applicant appealed this decision to the Board of Immigration Appeals, which has jurisdiction over Form I-192 appeals.

enter Canada via the United States with false documents; when she was at the border she became flustered; due to language issues, she did not realize she was being asked who drove her to the border; the driver was Mr. [REDACTED] not the applicant; the applicant is innocent and took the blame for her predicament only because he thought he was doing the right thing; and she realizes that she should not have shifted the blame to the applicant. An acquaintance of the applicant states that certain statements reflect that the applicant does not understand English very well, the applicant did not understand that taking the blame for his sister's actions would become a serious matter for him in the future, and he did not know he was not allowed to enter the United States between the incidents in 1995 and 2006.

These claims do not overcome the information the applicant provided in his sworn statements and the findings of inadmissibility made by the Director. The statements from the applicant's sister and acquaintance have been submitted many years after the initial smuggling incident in 1995 and appear to contradict the applicant's statements, which were made under oath before U.S. government officers in 2006 and 2007. The applicant's sworn statements indicate that he responded "yes" to the U.S. inspectors' questions concerning whether he understood what they were telling him. The applicant has not established that he did not understand the sworn statements he made before U.S. government officers or that his assertions about his ability to lawfully enter the United States were not willful and material.

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 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.

Concerning the applicant's favorable factors, the applicant states that he regrets the incidents in the past, he apologizes for the confusion or misunderstandings that he may have caused, and he intends no harm or malice towards the United States. The applicant's sister, relative of his spouse and business associate describe the applicant as kind, honorable, and generous.

The unfavorable factors in this case include the applicant's smuggling of his sister into the United States, his material misrepresentation when he sought admission into the United States, and his expedited-removal orders. The actions related to the applicant's inadmissibilities span a 12-year period. Considering the evidence in its totality, the AAO finds that the unfavorable factors outweigh the favorable factors in this case.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.