

(b)(6)



U.S. Citizenship  
and Immigration  
Services

[Redacted]

Date: FEB 27 2014 Office: MILWAUKEE, WI [Redacted]

IN RE: [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 (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.

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Milwaukee, Wisconsin, 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 sustained.

The record reflects that the applicant is a native and citizen of Poland who was ordered removed from the United States on August 16, 1993. 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 reside in the United States.

The Field Office Director determined that the applicant's adverse factors outweigh his favorable factors, and she denied the Form I-212 accordingly. *Director's Decision*, dated June 18, 2013.

On appeal, counsel asserts that the director did not properly consider the applicant's favorable factors, which outweigh his adverse factors. *Brief in Support Appeal*, dated August 14, 2013.

The record includes, but is not limited to, the applicant's statement, a psychological evaluation of the applicant and his son, statements in support of the applicant's good character, copies of the applicant's U.S. tax returns for a 12-year period, and educational records for the applicant's son. The entire record 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

(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 entered the United States on January 9, 1992 with a B-2 visitor visa. He was granted a six-month period of authorized stay. He was apprehended by immigration authorities on March 13, 1992, while working without authorization. The applicant was ordered deported on August 16, 1993, and he departed the United States on or about September 3, 1993. The applicant subsequently entered the United States without inspection from Canada and was apprehended by immigration authorities on or about March 19, 1994.<sup>1</sup> He was not placed into immigration proceedings upon apprehension. Because of his previous deportation order, 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. The applicant does not contest his inadmissibility.

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.*

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<sup>1</sup> The applicant, on his Form I-212, claims he re-entered the United States on September 21, 1994. Other documents in the record prepared by U.S. government officials in March 1994, however, indicate he re-entered on or about March 19, 1994.

*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 7<sup>th</sup> 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 favorable factors in this case include the applicant's lack of a criminal record, his filing of tax returns, his good character, his U.S. citizen sibling and child, and the hardship he and his child would experience if they lived in Poland. The applicant's child was born in 1996 and factors related to him therefore are after-acquired equities; less weight will be accorded for these favorable factors. However, the AAO also recognizes the unique circumstances of the applicant's relationship with his child. The child's mother resides in Poland, he has not resided with her for many years, and the applicant is his primary caregiver. The record also reflects that the applicant's child is integrated into the American lifestyle and has no other family in the United States besides his aunt, who lives approximately 1000 miles away. The applicant states that his child's ability to speak, write, and understand Polish is far below the high-school level and he would have to enter school several levels below where he should enter based on his age. Additionally, the applicant states that his work experience is as a truck driver and he would find very few employment opportunities, as a man in his fifties with no local connections or experience, in Poland. The statements in support of the applicant's good character are from long-time business associates and a neighbor who describe him as honest, caring and hard-working.

The unfavorable factors in this case include the applicant's lengthy unauthorized period of stay in the United States, his unauthorized employment, and his entry without inspection. Counsel cites to case law in asserting that illegal entry is not, in and of itself, evidence of bad moral character. As mentioned in *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. However, entry without inspection is still considered an unfavorable factor. Counsel states that 20 years have passed since the applicant's deportation order and that this should be considered a favorable factor. However, the AAO notes that the applicant resided and worked in the United States during that time in unauthorized status and as mentioned, this is considered a negative factor.

After a careful review of the record, the AAO finds that the applicant has established that the favorable factors outweigh the unfavorable factors in his case and that a favorable exercise of the Secretary's discretion is warranted.

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 been met.

**ORDER:** The appeal is sustained.