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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090

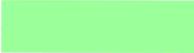


U.S. Citizenship
and Immigration
Services



DATE: OCT 07 2014

OFFICE: HOUSTON FIELD 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:



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,


for

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i) as an alien previously removed. The applicant was removed from the United States in June 2010 under a Notice of Expedited Removal pursuant to section 235(b)(1) of the Act. She 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 her U.S. citizen spouse.

The field office director also found the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation and concluded that the applicant had not demonstrated that the favorable factors in her application outweighed the unfavorable factors and denied her I-212 application accordingly. *See Decision of the Field Office Director*, dated July 13, 2013.

On appeal counsel for the applicant asserts that the applicant has demonstrated favorable factors and denies the unfavorable factors referenced in the Form I-212 denial. In support of the appeal, the counsel submits a brief, a death certificate for the applicant's previous spouse, a divorce certificate for the spouse's prior marriage, and a police clearance for the applicant from Honduras. 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 field office director's decision states that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation. However, the record does not indicate that she was found inadmissible under this provision at the time of her removal in 2010 or when applying for an immigrant visa in 2012, when the consular officer found the applicant inadmissible solely under section 212(a)(9)(A) of the Act for having been order removed under section 235(b)(1). At the time of her expedited removal, CBP officers found she had previously violated the terms of her B-2 visitor visa by accepting payment for services, cancelled her B-2 visa, and found her inadmissible under section 212(a)(7)(i)(I) of the Act for not being in possession valid entry documents. The record indicates that she stated under oath that she had previously engaged in unauthorized employment by providing manicure and pedicure services to friends and accepting payment, but there is no indication that she misrepresented this or any other material fact, but rather that she was truthful with CBP officials about this immigration violation, which resulted in her expedited removal. The applicant is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Since she was removed under section 235(b)(1) on June 26, 2010, which rendered her inadmissible pursuant to section 212(a)(9)(A)(i) for a period of five years, or until June 26, 2015, the applicant is required to obtain 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.

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 (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. We find 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.

On appeal counsel asserts that the applicant merits a favorable exercise of discretion due to factors including hardship to her U.S. citizen husband and the likelihood that the applicant will become a lawful permanent resident in the near future. Counsel contests the field officer director's finding that the applicant was involved in a sham marriage, that she willfully disregarded immigration laws, and that she was committed serious violations of immigration laws. Counsel contends that the applicant did not intend to violate the terms of her visa, and she provided manicures and pedicures to friends not realizing that accepting payment was considered unlawful employment in violation of immigration laws.

The record indicates that the applicant and her U.S. Citizen spouse were married in Honduras after the applicant had been expeditiously removed. Counsel states that although the applicant and her spouse married after her removal, their relationship predates her removal and that affidavits from

family and friends provide evidence of a good faith marriage, which counsel notes has continued. The decision of the field office director states that the applicant engaged in a “sham marriage” and that she failed to submit proof that her prior marriage and that of her husband were terminated. We note, however, that the record contains evidence both marriages were terminated and establishes that the applicant is the beneficiary of an approved Form I-130, submitted by her husband, and that their marriage was found to be valid. The record does not support a finding that she engaged in a sham marriage.

The applicant’s spouse states that his employment and family ties in the United States prevent him from living in Honduras with the applicant. He states the he has joint custody of his children from his previous spouse and that the spouse would not allow his younger child, age 16, to move to Honduras. He states that his whole family is in the United States and he would be abandoning his church community and friends if he relocated to Honduras. He states that he is healthy, but has hypertension and would be concerned about health care as well as safety in Honduras, as crime is common and Americans are targeted. The spouse states that if he lived in Honduras he would lose his job and could not get a comparable salary to be able to maintain two households, so it would be financially distressing to relocate to Honduras.

A mental health assessment from a licensed clinical professional counselor provides the spouse’s background and states that he reports life without the applicant has been difficult, as he loves her and believes she is the person he will spend the rest of his life with and does not want to lose her. The assessment states that the spouse describes depressive and anxious symptoms and reports weight gain, interrupted sleep, worrying about the future of his marriage and family, and not being motivated to do anything.

The record also contains letters of support from friends and family of the applicant and her spouse, including the pastor of the spouse’s church, as well as a police clearance letter indicating that the applicant has not been arrested or charged with any crime in Honduras, information about the Honduran economy, and travel warnings.

We note that in listing unfavorable factor’s the field officer director’s decision includes the applicant’s sham marriage to a U.S. citizen, her repeated and willful violations of immigration laws, and evidence of a callous attitude without evidence of reformation. However, we find no evidence in the record that the applicant has entered into a sham marriage, nor is there evidence of repeated immigration violations. The applicant was ordered removed after CBP officers determined she had violated the terms of her B-2 visitor visa by accepting payment for services, cancelled her B-2 visa, and found her inadmissible for not being in possession valid entry documents. The record does not support that the applicant has shown a pattern of immigration violations nor a callous disregard for immigration laws.

The favorable factors in this case are the hardships the applicant’s U.S. citizen spouse experiences due to separation from the applicant or that he would experience were he to relocate to Honduras, the applicant’s apparent lack of a criminal record, and letters of support from the community. The

unfavorable factors are the applicant's immigration violation of engaging in unauthorized employment after being admitted as a B-2 visitor and her subsequent removal.

After a careful review of the record, we find that the applicant has established that the favorable factors outweigh the unfavorable factors in her 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.