

U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **AUG 03 2015**

FILE: [Redacted]

APPLICATION RECEIPT: [Redacted]

IN RE: Applicant: [Redacted]
[Redacted]

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:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Atlanta Field Office, denied the Form I-212, 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 applicant is a native and citizen of El Salvador who 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). The applicant 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 and children.

The Field Office Director found the applicant failed to submit documentary evidence of her relationship with her husband and of his immigration status. The Field Office Director also found the record lacked proof of the applicant's departure from the United States and copies of all correspondence relating to her removal proceedings. The Field Office Director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated May 1, 2013 and received by the AAO January 5, 2015.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred because she had provided the evidence he considered missing and she submits additional evidence. *See Attachment to Form I-290B, Notice of Appeal or Motion*, dated May 24, 2013.

The record includes, but is not limited to: documents concerning identity and relationships, letters attesting to the applicant's good moral character and community activities, and financial documents. The entire record was reviewed and considered in rendering a decision on the appeal.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 212(a)(9) of the Act provides, in relevant part:

(A) Certain aliens previously removed.-

...

(ii) Other aliens. – Any alien . . . 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 . . . 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 Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The record reflects that on August 26, 2005, an immigration judge granted voluntary departure to the applicant. The order states that if the applicant failed to voluntarily depart on or before December 26, 2005, she would become ineligible for certain forms of relief for a period of 10 years from the date of departure. The applicant's deportation order will, therefore, render her inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act upon her departure from the United States, and she will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant may apply for conditional approval of Form I-212 under 8 C.F.R. § 212.2(j) before departing the United States, notwithstanding her ineligibility for adjustment of status. See *Instructions for Form I-212*. The approval of Form I-212 under these circumstances is conditioned upon the applicant's departure from the United States, and the Field Office with jurisdiction over the applicant's place of residence has jurisdiction over the application, irrespective of whether a waiver under section 212(g), (h), (i), or 212(a)(9)(B)(v) is needed.

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. 17 I&N Dec. 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. 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 applicant has the following favorable factors: She is married to a U.S. citizen and is the mother of two U.S. citizen children, ages ■ and ■. Letters she submits attest to her good moral character. However, because the applicant married her U.S. citizen spouse in 2004, more than a decade after she was placed in removal proceedings, and their children were born after she became subject to deportation, these after-acquired family ties are accorded less weight.

The applicant's unfavorable factors include her removal order as a result of her not complying with her voluntary departure order, her residence and employment in the United States without authorization, and the absence of an approved visa petition filed on her behalf. .

After a careful review of the record, we find that the unfavorable factors outweigh the favorable factors in the applicant's case. A favorable exercise of the Secretary's discretion therefore is not 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 not been met.

ORDER: The appeal is dismissed.