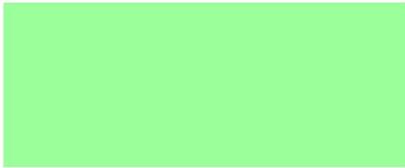




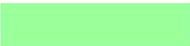
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



Date: FEB 03 2015

Office: HOUSTON FIELD OFFICE

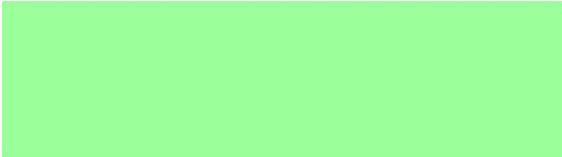
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii)

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,

  
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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 it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found inadmissible pursuant to section 212(a)(9)(C)(i) of the Immigration and Nationality Act, 8 U.S.C § 1182(a)(9)(C)(i), for being unlawfully present after previous immigration violations. The record reflects that the applicant entered the United States without inspection in 1996 and remained until May 2000. The applicant subsequently reentered the United States without inspection in December 2002 or January 2003, remaining until January 30, 2003. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii) in order to reside in the United States with his U.S citizen spouse.

The field office director found that the record failed to establish that the positive factors in the applicant's case outweighed the negative factors and denied the Form I-212 accordingly. *See Decision of the Field Office Director* dated August 21, 2014.

On appeal the applicant asserts that documentation supports a grant of the application as a matter of discretion. With the appeal the applicant submits social security benefit information and a bank statement for the applicant's spouse, letters from the spouse's neurologist and medical doctor along with medical records, an updated letter from the pastor who performed the applicant's marriage, identification documents for relatives of the spouse along with copies of previously-submitted letters of support for the applicant, telephone records, and additional documentation to establish the applicant's residence in Mexico. The record also contains medical documentation, letters of support, documents to establish the applicant's employment and residence in Mexico, a document from the applicant's medical doctor in Mexico, a police clearance letter from Mexico for the applicant, and country information for Mexico. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The decision of the field office director states that on May 4, 2000, the applicant was given voluntary departure, but that the applicant claims to have remained in the United States until January 30, 2003. On appeal the applicant states that he never claimed that he remained in the United States after being granted voluntary departure on May 4, 2000, but rather that he was returned to Mexico by U.S. Immigration and Customs Enforcement agents. The applicant states that he reentered the United States on December 24, 2002, in order to marry his spouse on [REDACTED], and then returned on January 30, 2003, to Mexico, where he has remained until the present time. USCIS records indicate that the applicant departed the United States on May 4, 2000.

The decision of the field office director indicates that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act as an alien removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted. The record does not establish, however, that the applicant was issued an order of removal, and he is therefore not inadmissible under section 212(a)(9)(C)(i)(II) of the Act. As noted, the applicant entered the United States without inspection in 1996 and remained until May 2000. The applicant thus accrued unlawful presence of more than one year after the April 1, 1997, effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).<sup>1</sup> As the applicant subsequently reentered the United States without inspection he is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least 10 years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States was on January 30, 2003, and he therefore has remained outside the United States for more than 10 years and is eligible to apply for permission to reapply for admission.

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<sup>1</sup> The applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year as more than 10 years have passed since his last departure from the United States.

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 United States. 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.*

In *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), the Commissioner 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. The Commissioner additionally stated,

[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. 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.

In support of the present application the applicant asserts that his spouse experiences unusual hardship because of a gunshot wound to the head suffered in 1996 that rendered her disabled, unable to work, and requiring attention and care. Medical documentation submitted to the record shows that the applicant's spouse suffered traumatic brain injury from the gunshot wound and continues to have

related medical problems, including seizures, headaches, and anxiety. Letters from family members of the spouse state that she needs the applicant with her and that her family worries about her traveling to Mexico to visit the applicant because of the violence there.

The applicant contends that he smoked marijuana 25 years ago and was pressured by co-workers to take cocaine in 2007, but has since not used drugs. The applicant submitted documentation dated in 2013 from a medical doctor in Mexico stating that he tested negative for drug use. The applicant also asserts that his spouse only receives a monthly social security check and that with the applicant's salary in Mexico he cannot help her financially.

The unfavorable factors in the applicant's case are his entry to the United States without inspection on two occasions, his unlawful presence, and his [REDACTED] misdemeanor conviction in Texas for Displaying a Fictitious or Counterfeit Inspection Certificate, for which he was sentenced to five days confinement.

The favorable factors in the applicant's case are the hardship the applicant's spouse experiences and likely difficulty she has visiting the applicant in Mexico due to physical impediments and fear of violence there, the passage of more than 12 years since the applicant's immigration violations, evidence of the applicant's employment in Mexico, letters of support for the applicant from the spouse's family, and the applicant's apparent lack of a criminal record other than his [REDACTED] conviction for displaying a fraudulent inspection certificate.

We find that the favorable factors outweigh the unfavorable factors in the applicant's case such that a favorable exercise of discretion is warranted.

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 that the applicant has established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.