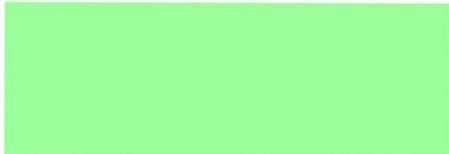




U.S. Citizenship
and Immigration
Services

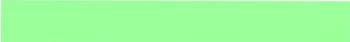
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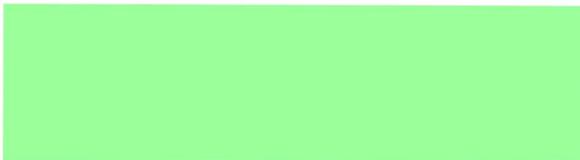
OFFICE: RENO

FILE: 

IN RE: 

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Reno, 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 El Salvador who submitted a Form I-212 to receive permission to enter the United States after her departure, following the issuance of a removal order on July 17, 2007. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii), 8 U.S.C. §§ 1182(a)(9)(A)(iii), in order to reside in the United States with her U.S. citizen spouse and child.

The Acting Field Office Director determined that the applicant failed to demonstrate favorable factors that outweighed unfavorable factors and denied Form I-212 accordingly. *See Decision of Acting Field Office Director*, dated May 23, 2013.

On appeal, counsel for the applicant asserts that there is no evidence of the applicant's lack of moral character and that she has many positive equities, including her U.S. citizen spouse and child. Counsel asserts that El Salvador is dangerous and that the applicant worked while residing in the United States, contributing to her household finances. Counsel further contends that a separation will result in lost educational and financial opportunities for the applicant's family members, in addition to psychological problems.

In support of the Form I-212 application and appeal, the applicant submitted identity documents, medical documentation for the applicant's spouse and mother in law, financial documentation, declarations from the applicant and her spouse, legal documentation, letters of support, letters from the applicant's spouse's employers, school records for the applicant, a psychological evaluation of the applicant's spouse, background country conditions for El Salvador and background information pertaining to father and son relationships. 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 on July 17, 2007, the applicant was ordered removed from the United States in immigration court proceedings. On February 23, 2009, the Board of Immigration Appeals dismissed the applicant's appeal and dismissed the applicant's motion to reconsider on October 14, 2009. The Ninth Circuit Court of Appeals, on March 2, 2012, denied the applicant's petition for review. The applicant departed from the United States on May 8, 2012.

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. 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 include the applicant's U.S. citizen spouse and child, letters of support submitted on her behalf, employment and payment of taxes in the United States and approximately six years of residence in the United States. The record also reflects that the applicant complied with the removal order once the appellate process was exhausted.

The unfavorable factors include the applicant's entry into the United States with fraudulent documents on or about May 2, 2006. The record also indicates that the applicant filed an asylum application, which resulted in a removal hearing on July 17, 2007. The immigration judge denied the applicant's application, as the applicant failed to demonstrate her eligibility for asylum relief. The immigration judge also found the details of the applicant's entry to the United States to contain implausible testimony.

The applicant's violations of immigration law are acknowledged, but it is noted that the applicant's spouse has been forced to use his savings to pay for both his expenses and his family's expenses in El Salvador and is currently working two jobs, for a total of approximately fourteen hours a day. The applicant's spouse submitted an accounting of his expenses including an extra expense of six hundred to seven hundred dollars a month for his family in El Salvador. The record contains tax documentation indicating that the applicant was employed and contributed to her household's finances during her residence in the United States.

The record also contains medical and psychological documentation for the applicant's spouse stating that he is suffering from symptoms of anxiety and depression, including problems with sleep. The applicant's spouse asserts that he is emotionally affected by his worry over the safety of the applicant and his child in El Salvador. The applicant contends that she is not safe in El Salvador, as extortion threats have been received on the telephone at the home she shares with family members. The applicant indicates that the household no longer has phone service.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, it is concluded

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NON-PRECEDENT DECISION

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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.