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

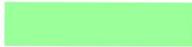


U.S. Citizenship
and Immigration
Services

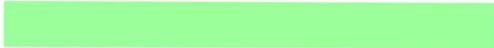


Date: JAN 28 2015

Office: HOUSTON

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,

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

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 record reflects that the applicant is a native and citizen of Mexico who was ordered removed from the United States on October 11, 2012. The applicant is 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).¹ 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.

The Field Office Director determined that the applicant's adverse factors outweigh her favorable factors, and he denied the Form I-212 accordingly. *Field Office Director's Decision*, dated June 23, 2014.

On appeal, the applicant asserts that the Field Office Director made several legal errors, including failing to consider the applicant's many favorable factors, the lack of unfavorable factors, evidence of hardship submitted, and the cumulative effect of hardship on the applicant and her spouse. In addition, the applicant asserts that the Field Office Director applied an extreme hardship standard instead of the required balancing of equities standard; and that her favorable factors outweigh her adverse factors. *Brief in Support of Form I-290B, Notice of Appeal or Motion*, dated August 21, 2014.

The record includes, but is not limited to, statements from the applicant and her spouse, psychological evaluations of the applicant and her spouse, medical records, financial records, statements from friends and family members, photographs and country conditions information about Mexico. 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

¹ The Field Office Director also refers to section 212(a)(6)(C)(i) of the Act in his decision, but he did not find the applicant inadmissible for obtaining admission or an immigration benefit by fraud or willful misrepresentation under that section of the Act. The record reflects that a U.S. consular officer had determined that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act.

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 with a B-2 visitor visa on February 7, 2012, and though her period of authorized stay expired on August 6, 2012, she did not depart the United States until September 28, 2012. She then sought to procure admission to the United States on October 11, 2012. In her sworn statement before a U.S. immigration officer on October 11, 2012, she admitted to working without employment authorization during her previous stay in the United States and to staying longer than her period of authorized stay. The applicant was found to be inadmissible under section 212(a)(7)(A)(i)(I) of the Act. She was therefore ordered removed under section 235(b)(1) of the Act and removed on October 11, 2012. Because of her expedited-removal order, the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) 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 her 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 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.*

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 7th 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.

The favorable factors in this case include the applicant's lack of a criminal record, her U.S. citizen spouse; an approved Form I-130, Petition for Alien Relative; hardship to the applicant; and hardship to her spouse. Concerning her own hardship, the applicant states that she is suffering from severe clinical depression, panic and anxiety attacks, inability to sleep, weight fluctuation, hair loss, and bad moods. A psychologist diagnosed her with symptoms of major episodic depression and generalized anxiety disorder. Concerning her spouse's hardship, the applicant's spouse states that he was diagnosed with depression and anxiety disorder; he has developed insomnia; he has become lethargic; he has gained 30 pounds; he was prescribed medication for depression, anxiety and

insomnia; he approached his employer about working in Mexico part-time but was denied; he and the applicant want to start a family; he would have to give up his career of 14 years and professional license if he left the United States; he has no family ties in Mexico; he has lived his entire life in the United States and does not speak Spanish; his parents and siblings are in the United States; and Guadalajara is a dangerous area. A psychologist who has evaluated the applicant's spouse states that the applicant's spouse suffers from depression, anxiety, and panic attacks and he is taking medication for these issues. The psychologist has evaluated the applicant's spouse multiple times and states that his condition has steadily deteriorated; the diagnosis of depressive disorder has become major depressive disorder; his generalized anxiety disorder has become panic disorder; and he continues to suffer from insomnia. The record also includes articles addressing safety issues in Mexico. The applicant and her spouse were married on November [REDACTED]; therefore their marriage and hardship are after-acquired equities and less weight will be accorded for these favorable factors.

The record also reflects that the applicant has expressed remorse for her actions and that she has paid taxes on her earnings as a nanny while in the United States. In addition, the applicant submits statements from friends and family describing her good character.

The unfavorable factors in this case include the applicant's period of unauthorized stay during her last visit to the United States and her brief period of unauthorized employment. We note that the applicant was out of status for 53 days, a relatively short period of time.

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 weighing the favorable and unfavorable factors, we determined that certain favorable factors were not after-acquired equities. In addition, although less weight was given to the applicant's after-acquired equities, these equities were still considered relatively significant due to the nature of the hardship detailed in the record.

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.