U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-R-A-

DATE: NOV. 17, 2015

APPEAL OF LOS ANGELES FIELD OFFICE DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR REMOVAL

The Applicant, a native and citizen of Mexico, seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). The Field Office Director, Los Angeles Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was found is inadmissible to the United States pursuant to section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A). In a decision dated February 9, 2015, the Director determined that the Applicant's adverse factors outweighed his favorable factors, and denied the Form I-212 accordingly.

On appeal the Applicant asserts that the decision failed to properly analyze the facts of his case in considering his residence in and strong ties to the United States and hardship to his relatives. With the appeal the Applicant submits a brief and updated declarations from his mother, his children, and himself; updated psychological evaluations for the Applicant and the Applicant's mother; a statement from the mother's medical doctor; biographic documentation; court records; financial documentation; and country information for 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.-
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> > (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 the Applicant entered the United States on September 14, 1972, was ordered deported on September 20, 1972, and deported to Mexico on September 22, 1972. In September 1973, the Applicant attempted to re-enter the United States by presenting fraudulent documentation. The Applicant was subsequently paroled into the United States. The Applicant is inadmissible pursuant to section 212(a)(9)(A) 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 his 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 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 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.

On appeal the Applicant asserts that his mother has suffered depression since the 2005 death of his former common law spouse with whom she was emotionally close, and the 2010 death of his mother's spouse. The Applicant states that his mother lives alone in a seniors-only project where, because he works with a temporary employment agency, he has the flexibility to visit daily when he can take her shopping or to see her doctor. A 2013 letter from the manager of the mother's residence states that the Applicant's mother is ill and that the Applicant often takes her to her doctor and assures that she takes her medication. In a March 5, 2015 statement the Applicant's oldest daughter describes the Applicant's importance to his mother and states that she will break down without the Applicant.

In her own statements, the Applicant's mother maintains that she is becoming forgetful and that the Applicant visits daily, takes her to doctor appointments, gets her medication when it runs low, and purchases groceries for her. She maintains that although she and her husband had not been together for many years they had remained close and his death affected her greatly, particularly after the death of the Applicant's former common law spouse and her young daughter. The mother states that

she is concerned for the Applicant in Mexico because he is not young anymore, has no one there to help him, and will have no job, and that she fears for his safety because of crime there.

Medical documentation in the record from 2015 establishes that the Applicant's mother suffers from angina of the heart, major depression, and osteoarthritis that limits her mobility, and that she is generally isolated. The documentation further establishes that the Applicant's mother needs the Applicant as he is the main individual to provide her care. A letter from another medical doctor, dated September 30, 2013, states that the Applicant's mother has been diagnosed with stroke, recurrent depression, hypertension, osteoporosis, and hypercholesterolemia, and has a complex regimen of medications that requires assistance, primarily from the Applicant. A letter from another attending physician, dated May 21, 2010, lists several medical conditions and states that the mother had been treated for psychiatric problems since November 2006. Additional letters from medical doctors in 2008 also indicate the mother had been treated for depression and other physical ailments, and that the Applicant was her primary care giver.

A psychological evaluation of the mother, dated June 14, 2010, stated that she was unable to care for herself and indicated that she was emotionally traumatized by the 2005 death by auto accident of the Applicant's common law wife that exacerbated her pre-existent depression for which she was under anti-depressants. The evaluation diagnosed the mother with major depression, recurrent panic attacks and dementia cognitive disorder, and opined that her depression would deteriorate. The record also contains a list of medications prescribed to the Applicant's mother from 2003 through 2010 that included anti-depressants.

An updated psychological evaluation of the Applicant's mother, dated April 16, 2015, provides the same diagnosis and opines that the possibility of the Applicant being forced to leave is devastating to her because she will face the loss of love and companionship, will have anxiety over his safety, and will likely become further depressed. The evaluation states that the mother fell in September 2014, fracturing her arm, and had surgery and loss of strength. It further states that the Applicant and grandchildren visit every day and the Applicant is attentive to his mother's needs. The Applicant and his mother further assert that the mother receives social security income, with which she confirms she pays her rent, but that she receives additional money from the Applicant. The record reflects that the Applicant provides daily assistance to his mother, whom the record shows has a history of medical and psychological issues, and helps supplement her income.

The Applicant and his mother further state that the mother's grandchildren and their families are in the United States and that she has no ties to Mexico. They maintain that the mother is elderly with health issues and doctors in the United States and is in a frail psychological condition. The mother asserts that she is too old to relocate to Mexico where she would have no income because she would no longer receive social security payments and does not qualify for assistance from the Mexican government. She further states that she believes Mexico is dangerous and fears crime in , which the record indicates is the family's home state, and that the Applicant has little savings because he has spent most of his money on his children and her. The Applicant has submitted country information about crime in Mexico, the difficulty in obtaining jobs for those not considered

young, and other age discrimination. According to the U.S. Department of State, crime and violence remain serious problems throughout the state of [redacted] *See* Travel Warning-U.S. Department of State, dated May 5, 2015.

On appeal the Applicant also asserts that his immigration violations occurred as a teenager when he was young and angry with no parental support or guidance. The Applicant acknowledges that he had problems with alcohol, but asserts that he has reformed and repaired relations with his children whom he supports emotionally and financially. The record contains letters from the Applicant's children asserting that they had strained relationships with the Applicant, but that he has changed to be caring and benevolent, that he has grown to be trustworthy, and that they can depend on him for emotional and financial support. The Applicant further contends that he gained accounting skills and has continuously been able to find employment sufficient to support himself and his family. The Applicant asserts that he is reformed and he aides his children and mother emotionally and financially.

The favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen mother would face if the Applicant were to relocate to Mexico, regardless of whether she accompanied the Applicant or stayed in the United States; the Applicant's family and community ties; his record of employment and payment of taxes since the early 1980s; letters of support from family, employers, and clients; the passage of more than 40 years since his immigration violations; gainful employment in the United States; and his apparent lack of a criminal record since 2006. The unfavorable factors in this matter are the Applicant's illegal entry in 1972, removal from the United States in 1972, his fraud or willful misrepresentation in attempting to procure admission to the United States in 1973, periods of unlawful presence and employment in the United States, and the Applicant's convictions.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. After a careful review of the record, we find that the Applicant has established that the favorable factors outweigh the unfavorable factors in his case and that a favorable exercise of the Secretary's discretion is warranted.[1]

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.

Cite as *Matter of J-R-A-*, ID# 14289 (AAO Nov. 17, 2015)

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[1] In a separate decision, this office sustained the Applicant's appeal of the denial of his Form I-601, Application for Waiver of Grounds of Inadmissibility, finding the Applicant had established extreme hardship to a qualifying relative and that a favorable exercise of discretion was warranted.