



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-C-

DATE: JAN. 12, 2016

APPEAL OF ATLANTA 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 Haiti, seeks consent to reapply for permission to reapply for admission into the United States after deportation or removal. *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, Atlanta, Georgia, denied the application. The matter is now before us on appeal. The appeal will be sustained.

In a decision dated December 4, 2014, the Director indicated that the Applicant is inadmissible to the United States pursuant to § 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), for having been ordered removed from the United States and seeking admission within ten years of removal. The Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied accordingly.

On appeal, the Applicant seeks an exception from his inadmissibility pursuant to § 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 his spouse. The Applicant contends that the Director did not properly adjudicate his Form I-212, and he asserts that the evidence in the record demonstrates that approval of the application is merited in his case. The record includes, but is not limited to, letters from the Applicant and his spouse, and family, friends and members of his community; a psychological evaluation; financial documentation; country conditions evidence; and documents establishing relationships and identity. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(A) Certain alien previously removed.-

....

(ii) Other aliens.- Any alien not described in clause (i) who-

...

(II) departed the United States while an order of removal was outstanding, and 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

The record reflects that an immigration judge denied the Applicant's asylum claim and on August 23, 1996, granted him voluntary departure until September 22, 1996, with an alternate order of deportation. His order of deportation was put into effect on September 23, 1996. The Applicant departed the United States around August 2012, and he reentered the country pursuant to a grant of advance parole on August 21, 2012. Because the Applicant departed the United States while an order of removal was outstanding and is seeking admission within ten years of his last departure from the United States, he is inadmissible under § 212(a)(9)(A)(ii)(II) of the Act and he requires permission to reapply for admission pursuant to § 212(a)(9)(A)(iii) of the Act. The Applicant does not contest his inadmissibility under § 212(a)(9)(A)(ii)(II) of the Act.

In *Matter of Tin*, the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212:

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.

14 I&N Dec. 371 (Reg'l. Comm'r 1973).

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.

In the instant case, documentation contained in the record demonstrates the Applicant's ties to the United States, including his marriage to a U.S. citizen. In addition, a letter from the Applicant's church reflects that the Applicant became a spiritual leader in the church in May 2010; that he is now the pastor of the church; and that his congregation attests to his involvement in the church and community and his good character. Further, a letter from the Applicant's spouse discusses hardships she would face if the Applicant were denied admission into the United States, including statements that she was the victim of domestic abuse in her prior marriage, that the Applicant makes her forget her past and has changed her life, and that the Applicant completes her. Letters from the Applicant's spouse's siblings and friend also indicate that the Applicant's spouse was distraught before she met the Applicant, and that she has regained her confidence and become a new person with the Applicant.

A behavioral/mental health assessment prepared on January 15, 2015, reflects that the Applicant's spouse also expressed that she is terrified of losing the Applicant and of his being harmed in Haiti due to high crime and unhealthy and unsafe living conditions; that her brother was robbed and shot at in Haiti in May 2014; and that the Applicant's mother lives in poverty in Haiti. The assessment diagnoses the Applicant's spouse with generalized anxiety disorder, characterized by excessive worries, difficulty concentrating, fear for her and the Applicant's safety, and a sense of impending doom due to the Applicant's uncertain immigration situation. In addition, country conditions reports contained in the record corroborate that Haiti is the poorest country in the Western Hemisphere, with 80% of the population living beneath the poverty line, and that the Department of State has issued travel warnings based in part on the security environment in Haiti. We also note that Haiti is a

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temporary status designated country (TPS) due to difficult conditions in the country, and that the Applicant has been granted TPS status.

The favorable factors in this matter include the approved Form I-130, Petition for Alien Relative; the extreme hardship that the Applicant's U.S. citizen spouse would face if the Applicant were to relocate to Haiti, regardless of whether she accompanied him or remained in the United States; hardship to the Applicant based on country conditions in Haiti and his TPS status; remorse for misrepresentations on his asylum application; the Applicant's community ties in the United States; his lack of a criminal record; and statements related to his good character. We note that his after-acquired equities are accorded less weight. The unfavorable factors are the Applicant's misrepresentations on his asylum application, failure to depart pursuant to a voluntary departure order; and periods of unauthorized presence and employment in the United States.

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.

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. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of E-C-*, ID# 14624 (AAO Jan. 12, 2016)