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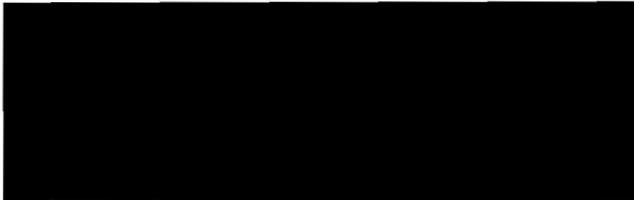
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

JUN 26 2008

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:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, 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 dismissed.

The applicant is a native and citizen of Mexico who, on April 30, 1998, was apprehended by immigration officers. The applicant testified that he was part of a group of aliens who were being smuggled into the United States. On May 20, 1998, the applicant was placed into immigration proceedings. On March 9, 1999, the immigration judge ordered the applicant removed *in absentia*. On March 12, 1999, a warrant for the applicant's removal was issued. The applicant failed to depart the United States. On November 9, 2005, the applicant married his U.S. citizen spouse, [REDACTED]. On December 30, 2005, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On December 19, 2006, the applicant appeared at Citizenship and Immigration Services' (CIS) Chula Vista, California Field Office. On the same day, immigration officers detained the applicant as a result of a fugitive operation and the applicant was removed from the United States and returned to Mexico. On December 19, 2006, the Form I-130 was approved. On January 3, 2007, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 with his U.S. citizen spouse.

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated April 24, 2007.

On appeal, [REDACTED] contends that her husband deserves a second chance. *See Form I-290B and Letter*, dated May 21, 2007. In support of her contentions, [REDACTED] submits the referenced Form I-290B and letter with copies of documentation previously provided. The entire record was considered in rendering a decision in this case.

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 on a 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 [REDACTED] is a native and citizen of the United States by birth. The record does not indicate that the applicant and [REDACTED] have any children together. The applicant is in his 30's and Ms. [REDACTED] is in her 20's.

The AAO now turns to a consideration of the positive and negative factors in the present case.

**On appeal,** [REDACTED] states that she cannot blame the applicant for what he has done in the past and that, since they started dating in 2002, the applicant has not had any problems with the law. She states that the way in which she and the applicant live in Mexico is very hard and stressful because the applicant works for a U.S. company which pays approximately \$70 per week. She states that this is the hardest thing she has experienced in her life because she was born and raised in Washington State and living in Mexico is extremely hard. She states that she does not feel safe in Mexico as there is no security from the Mexican authorities. She states that she lost her job in the United States because it was too hard for her to commute five days a week from Mexico to Del Mar, California. She states that she now works for Wells Fargo bank and is in school until October 2007. She states that the applicant has been the person who gives her support and encouragement. She states that it is extremely hard for her to be the head of the household, pay bills and pay the rent by herself. She states that she is experiencing severe financial hardship.

The applicant, in a letter, states that he knowingly failed to appear at his immigration hearing or to report for removal because if he had, he would have been unable to send money to his parents in Mexico. He states that his sister is married, has two children and had recently bought a house at the time he was ordered removed from the United States. He states that he still sends money to his parents with the help of [REDACTED]. He states that he was steadily employed and was taking English classes at the time he was apprehended and removed from the United States. He states that he and his wife have a lot of debts, such as her school loans, credit cards, department store cards, truck payments, rent and insurance. He states that it hurts him to see his wife struggling with the situation and he feels hopeless and ashamed because it is his fault. He states that he has been a good citizen and never sought government benefits or unemployment. He states that if he is refused admission to the United States, his wife will be unable to pay all of their debts and will probably have bad credit and have to leave school.

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 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 considering discretionary weight. 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. The AAO finds these precedent legal decisions to establish the general principle that "after-acquired equities" are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

As established by the record, the favorable factors in this matter are the applicant's U.S. citizen spouse, the general hardship the applicant's spouse will suffer if the applicant is denied admission, and an approved immigrant visa petition. The AAO notes that the applicant's marriage, as well as the filing of the immigrant visa petition benefiting him, occurred after the applicant was placed into immigration proceedings and ordered removed. These factors are therefore, "after-acquired equities" and the AAO will accord them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States; his failure to attend his immigration hearing; his failure to comply with an order of removal; his extended unauthorized presence and employment in the United States; and his inadmissibility pursuant to 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, prior to his December 19, 2006, removal from the United States.

The applicant in the instant case has multiple immigration violations. The totality of the evidence demonstrates that the favorable factors in the present matter are outweighed by the unfavorable factors. Accordingly, the appeal will be dismissed.

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 failed to establish that a favorable exercise of the Secretary's discretion is warranted.

**ORDER:** The appeal is dismissed.