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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536



AUG 25 03 - 0214212

FILE

Office: California Service Center

Date: AUG 25 2003

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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is before the AAO on a motion to reopen. The motion will be granted. The order dismissing the appeal will be withdrawn, and the application will be approved.

The applicant is a native and citizen of Mexico who was initially present in the United States without a lawful admission or parole in 1987 when he was 12 years old. He attended Junior and Senior High School and graduated with honors. After working from 1993 to 1995, he returned to Mexico due to a family illness. On December 19, 1995, he attempted to procure admission into the United States by falsely claiming to be a United States citizen. He was found to be excludable by an immigration judge, and was excluded and deported on December 26, 1995.

On January 5, 1997, the applicant again applied for admission into the United States by making an oral false claim to U.S. citizenship. He was charged with being excludable under section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without a valid visa or lieu document. On January 9, 1997, he was excluded and deported. Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of 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).

The applicant married a U.S. citizen in Mexico on February 9, 1998, and he is the beneficiary of an approved Petition for Alien Relative.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly. The AAO affirmed that decision on appeal.

On motion, counsel submits a psychological evaluation of the applicant's wife, [REDACTED] a birth certificate for a child who was born in May 1995 to the applicant and [REDACTED] and a letter from [REDACTED]

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

(i) 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 5 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) Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 of the Act 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) 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 Attorney General [now Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The Service has held that an application for permission to reapply for admission to the United States may be approved when the applicant establishes he or she has equities within the United States or there are other favorable factors that offset the fact of deportation or removal at Government expense and any other adverse factors that may exist. Circumstances which are considered by the Service include, but are not limited to: the basis for removal; the recency of removal; the length of residence in the United States; the moral character of the applicant; the alien's respect for law and order; the evidence of reformation and rehabilitation; the existence of family responsibilities within the United States; any inadmissibility to the United States under other sections of the law; the hardship involved to the alien and to others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973). An approval in this proceeding requires the applicant to establish that the favorable aspects outweigh the unfavorable ones.

The record contains the applicant's marriage certificate indicating that he married [REDACTED] in Mexico in February 1998. Therefore, any equities gained through the applicant's marriage abroad to a U.S. citizen will be given full-weight because the equities were not acquired by a marriage in the United States following a violation of immigration law.

Counsel submits a psychological evaluation for [REDACTED] that indicates she is developing an Adjustment Disorder and Depressed Mood that would develop into a full Major Depressive Disorder if her husband were not allowed to stay in the United States. The report states that [REDACTED] has had current and active suicide ideation that would further add to the severity of the situation.

The letter from [REDACTED] the mother of the applicant's son, reflects that the applicant gives her financial support and is an important father figure in the child's life.

The favorable factors in this matter are the applicant's family ties, the emotional and psychological hardship to his wife, the need for the applicant's presence to assist his son, the absence of a criminal record, the approved Petition for Alien Relative, and the prospect of general hardship to the family.

The unfavorable factors in this matter include the applicant's two attempts to procure admission by falsely claiming to be a U.S. citizen, his two exclusions, his reentry without permission to reapply, and his presence in the United States without a lawful admission or parole, though it is noted he was a minor for part of that time, between the ages of 12 and 18.

Although the applicant's actions in this matter cannot be condoned, his equity (marriage) was not gained while being unlawfully present in the United States as previously indicated, and it was not entered into while in deportation proceedings. Therefore, the marriage can be given full weight. After considering the full-weight of the applicant's marriage, his wife's psychological problems, and the close ties to his U.S. citizen child, the applicant has now established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has established that a favorable exercise of the Attorney General's discretion is warranted. Accordingly, the motion will be granted.

ORDER: The motion is granted. The order of July 26, 2002, dismissing the appeal is withdrawn, and the application is approved.