U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date:

IN RE: [redacted] AUG 09 2004

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:

[redacted]

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, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Interim District Director, Phoenix, Arizona, and 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 was removed from the United States on October 14, 1994 pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act). Subsequently, the applicant reentered the United States without inspection by an immigration officer and without first obtaining permission to reapply for admission to the United States. The applicant married a national of Mexico on May 11, 1996. The applicant's spouse became a naturalized citizen of the United States in 1997. The applicant 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 spouse and children.

The director determined that the unfavorable factors in the application outweigh the favorable factors. The I-212 application was denied accordingly. *Decision of the Director*, dated July 21, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services erred in requiring the applicant to file the Form I-212 concurrently with the Form I-485 Application to Register Permanent Residency/Adjust Status. Counsel contends that the applicant should be given the opportunity to submit the documentation in support of his Form I-212 application and Form I-601 Application for Waiver of Grounds of Excludability at the time of interview when a more thorough evaluation of the facts can be assessed. *Form I-290B*, dated July 18, 2003. The record does not offer any documentation to support the assertions of counsel.

The record contains copies of documents relating to the criminal history of the applicant; copies of financial and tax documents for the applicant and his spouse; a copy of the naturalization certificate of the applicant's spouse; a copy of the real estate contract for the home of the applicant and his family; verification of the employment of the applicant; selected quotations from *Deadbeat Dads: A National Child Support Scandal* and photographs of the applicant and his family. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> (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 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) [A]ny alien . . . who-

> (I) Has been ordered removed under section 240 or any other provision of law . . . 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 Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factor in the application is the hardship imposed on the applicant's spouse and children by the applicant's inadmissibility to the United States.

The AAO notes that the applicant and his wife wed after the applicant was removed from the United States. The Seventh Circuit Court of Appeals held in *Garcia-Lopez v. INS,* 923 F.2d 72 (1991), that less weight is given to equities acquired after a deportation (removal) order has been entered. Furthermore, 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 (removal) proceedings, and with knowledge that the alien might be deported. *See Ghassan v. INS,* 972 F.2d 631 (5th Cir. 1992). The AAO finds that the applicant's wife should have been aware that the applicant had been previously removed from the United States when she married him. Hardship to the applicant's wife is thus given diminished weight.

The unfavorable factors in the application include the fact that the applicant reentered the United States, without inspection, after being removed. The applicant failed to apply for permission to reenter prior to his reentry and offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country.

The AAO further notes that the applicant has a criminal record. The record reflects that on September 2, 1994, the applicant pled guilty and was convicted of aggravated assault. The applicant was sentenced to imprisonment for 90 days and placed on probation for two years. Further, an applicant's prior residence in

the United States is considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. *See Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978).

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant has failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.