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

fly

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: AUG 21 2006

IN RE: [REDACTED]

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, 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 Honduras who, in July 1989, entered the United States without inspection. On July 25, 1989, immigration officers apprehended the applicant and placed him in proceedings for entering the United States without inspection. On November 15, 1989, the immigration judge granted the applicant voluntary departure until May 15, 1990. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On August 23, 1990, a warrant of deportation was issued informing the applicant that he should present himself for deportation from the United States on September 19, 1990. The applicant failed to present himself for deportation or to depart the United States and has since remained in the United States. On August 31, 1996, the applicant married his U.S. citizen spouse, [REDACTED]. On November 15, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by [REDACTED]. On September 5, 1999, the applicant's U.S. citizen daughter was born. On March 6, 2000, the Form I-130 was approved. On March 18, 2005, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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 remain in the United States and reside with his U.S. citizen spouse and daughter.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The director denied the Form I-212 accordingly. *See Director's Decision* dated July 5, 2005.

On appeal, counsel contends that the applicant should be granted permission to reapply for admission because his wife and daughter would suffer financial and emotional hardships. *See Applicant's Brief*, dated August 2, 2005. In support of his contentions, counsel only submitted the above-referenced brief. The entire record was reviewed in rendering a decision in this case.

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

(A) Certain aliens previously removed.-

....

(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 . . .

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 Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

The record of proceedings indicates that the applicant entered the United States without inspection and, when granted voluntary departure, failed to voluntarily depart the United States. The voluntary departure became a final order of removal with which the applicant failed to comply. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act and, therefore, must receive permission to reapply for admission.

Counsel and the applicant, in the brief and the applicant's affidavit, contend that the applicant's wife and daughter will suffer extreme hardship because it is expensive to reside in California, the applicant and Ms. [REDACTED] combine their income to meet their mortgage payments and the applicant would be unable to earn sufficient income in Honduras to support two households. The AAO notes that, in 1997, [REDACTED] earned approximately \$14,215. The record shows that [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. There is no evidence in the record to suggest that [REDACTED] suffers from an illness that would prevent her from working or decrease her ability to earn a sufficient income to support her family. There is no evidence in the record to suggest that [REDACTED] or the applicant's daughter suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] may have to lower her standard of living, would essentially become a single parent and professional childcare may involve an added expense and not equate to the care of a parent, these are not hardships that are beyond those commonly suffered by aliens and families upon deportation.

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. *Supra*.

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-Nunoz 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 that the above-cited precedent 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.

The favorable factors in this matter are the applicant's U.S. citizen spouse and daughter, and an approved immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States, extended unauthorized residence and employment in the United States, failure to depart the United States under an order of voluntary departure and non-compliance with a 1990 order of removal.

The applicant in the instant case has multiple immigration violations. The applicant's actions in this matter cannot be condoned. Moreover, the AAO finds that the birth of the applicant's daughter, the applicant's marriage and immigrant petition occurred after a removal order was issued against the applicant in 1990. The AAO finds that these factors are "after-acquired equities" and that any favorable weight derived from the applicant's marriage, daughter or approved immigrant petition is accorded diminished weight. The totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the laws of the United States, and that the favorable factors in the present matter are outweighed by the unfavorable factors.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.