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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: SAN FRANCISCO

Date:

AUG 21 2006

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:

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 District Director, San Francisco, California, 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 originally entered the United States without inspection in March 1988. On October 21, 1994, the applicant was convicted of providing alcohol to a minor. The applicant's sentence was suspended and he was placed on 12 months of probation. On March 14, 1995, the applicant was convicted of hit and run with injury or death and driving under the influence causing injury. The applicant was sentenced to 100 days in jail and 16 months in jail for those convictions, respectively. On September 7, 1995, an immigration judge ordered the applicant removed. On October 5, 1995, the applicant was removed from the United States and returned to Mexico. The applicant reentered the United States without inspection, parole or permission to reapply for admission, on an unknown date prior to July 24, 1999, the date on which he married his U.S. citizen spouse, [REDACTED]. On January 29, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed on his behalf by [REDACTED]. On March 12, 2001, the applicant's first U.S. citizen daughter was born. On December 13, 2002, the applicant filed the Form I-212. On April 15, 2003, the applicant's second U.S. citizen daughter was born. The applicant was found 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) for seeking admission after being removed from the United States. 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 children.

The district director determined that the applicant was inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for seeking admission after having been removed from the United States. The district director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The district director denied the Form I-212 accordingly. *See District Director's Decision* dated July 16, 2004.

On appeal, counsel contends that the district director erred in finding that the unfavorable factors outweighed the favorable factors in the applicant's case. *See Applicant's Brief*, dated November 8, 2004. In support of the appeal, counsel submits the above-referenced brief, affidavits from the applicant and his spouse, documentation in regard to the applicant's home ownership, tax and employment records and letters of recommendation. The entire record was reviewed in rendering a decision in this case.

The AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A) of the Act and, therefore, must receive permission to reapply for admission.

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 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) 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, was ordered removed and subsequently entered the United States without lawful admission or parole and without permission to reapply for admission after his removal. The district director based the finding of inadmissibility under section 212(a)(9)(A) of the Act on the applicant's admitted reentry into the United States after a prior removal. Counsel does not contest the district director's determination of inadmissibility.

On appeal, counsel asserts that the applicant merits a favorable exercise of discretion because he has a U.S. citizen spouse and two U.S. citizen children, he is eligible under his wife's approved Form I-130 for an immigrant visa, his wife and children would suffer hardship without his support and that, except for his 1994 and 1995 convictions, he has never violated any law.

The AAO finds that counsel has failed to provide sufficient evidence to prove that [REDACTED] would be unable to support herself and her family if the applicant's permission to reapply for admission were refused. Financial records indicate that, in 2003, [REDACTED] earned approximately \$23,378. Counsel asserts that [REDACTED] salary is insufficient to support her and her family. However, 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>.

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. *Supra*.

*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-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 children, the absence of any criminal record since reentering the United States, and an approved immigrant petition for alien relative. The AAO finds that the applicant's marriage, approved immigrant petition and birth of his children occurred after the applicant was placed into proceedings, was removed from the United States and reentered the United States after removal. The AAO finds that these factors are "after-acquired equities" and that any favorable weight derived from the applicant's marriage, immigrant petition and children is accorded diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States, extended unauthorized residence and employment in the United States, the applicant's convictions for furnishing alcohol to a minor, hit and run resulting in injury or death and driving under the influence causing injury and the applicant's return to the United States without lawful admission or parole and without permission to reapply for admission after he was informed such permission was required.

The applicant in the instant case has multiple immigration violations and criminal convictions. The applicant's actions in this matter cannot be condoned. 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 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.