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FILE: [REDACTED]

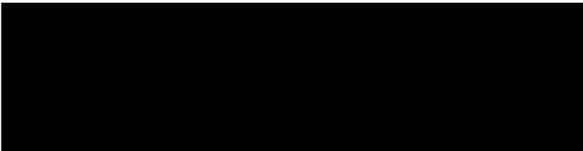
Office: CALIFORNIA SERVICE CENTER

Date: **JUL 13 2007**

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:



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 February 10, 1996, applied for admission at the San Ysidro, California Port of Entry. The applicant presented an I-551 Lawful Permanent Resident Card belonging to another person under the name [REDACTED]. The applicant was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without a valid immigrant visa and was placed into proceedings. On February 15, 1996, the immigration judge ordered the applicant removed from the United States under the name [REDACTED]. The applicant was returned to Mexico the same day. On January 31, 1997, the applicant married his now ex-wife, [REDACTED] in Oxnara, California. On February 1, 2003, the applicant married his current wife, [REDACTED], after divorcing [REDACTED]t. On May 20, 2003, [REDACTED] filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on April 16, 2005. On October 2, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On October 6, 2006, the applicant filed the Form I-212. On February 13, 2006, the applicant appeared at the Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. The applicant testified that he originally entered the United States without inspection in 1993. He stated that he had never been removed from the United States and that he had never made a material misrepresentation or committed fraud in an attempt to enter the United States. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 remain in the United States and reside with his U.S. citizen spouse and children.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *See Director's Decision* dated February 12, 2007.

On appeal, counsel contends that the director failed to thoroughly and adequately consider all of the factors in the applicant's case. Counsel contends that the applicant is eligible for permission to reapply for admission. *See Counsel's Brief*, dated March 7, 2007. In support of his contentions, counsel submits only the 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 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 was removed from the United States and reentered the United States without inspection or parole within a year of that removal. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and, therefore, must receive permission to reapply for admission.

The AAO notes that the director found the applicant to be inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), on the record reflecting the applicant's 1996 removal and reentry into the United States without inspection after that removal. In order to be found inadmissible pursuant to section 212(a)(9)(C) of the Act, an applicant, while he may have been ordered removed prior to April 1, 1997, must have unlawfully reentered or attempted unlawful reentry after April 1, 1997, the date of enactment of the provision. *See Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs dated June 17, 1997.* The AAO finds that the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act because his unlawful entry into the United States occurred prior to April 1, 1997.

The record reflects that [REDACTED] is a native of Mexico who became a lawful permanent resident in 1999 and a naturalized U.S. citizen in 2005. The applicant and [REDACTED] have a twelve-year old daughter and an eleven-year old daughter who are both U.S. citizens by birth. The applicant and [REDACTED] are in their 30's.

On appeal, counsel asserts that the applicant is entitled to a waiver pursuant to sections 212(a)(6)(F) and 274C of the Act, 8 U.S.C. §§ 1182(a)(6)(F) and 1324C, and 22 C.F.R. § 40.66. The AAO finds that these sections of the Act and federal regulations do not relate to the sections of the Act under which the director found the applicant to be inadmissible. These sections of the Act and federal regulations refer to only civil monetary penalties in relation to using fraudulent documents and to aliens subject to a final order of removal pursuant to section 274C of the Act. The applicant is not subject to a final order of removal pursuant to section 274C of the Act and these sections of the Act and regulations do not have a bearing on whether the applicant is eligible for permission to reapply for admission.

Counsel asserts that there are mitigating factors surrounding the circumstances of a number of the negative factors listed by the director. Despite counsel's assertions, there is no documentation in the record, besides the applicant's affidavit, that the applicant only sought to reenter the United States by fraud in 1996 after his presence in Mexico was required for the funeral of his brother. Despite counsel's assertions, there is no documentation in the record to indicate that when the applicant was apprehended by immigration officers in 1996 he admitted to his true name [REDACTED] but was removed under the name [REDACTED] because he was in possession of identification under this name and the immigration officer did not believe that his true name was [REDACTED] because of this documentation. Despite counsel's assertions,

there is no documentation in the record to indicate that, at the time of his apprehension, the application was entitled to the benefit of a waiver under law for which he failed to apply because of his ignorance of immigration laws. Despite counsel's assertions, there is no documentation in the record, and the evidence in the record contradicts, that at the time of his interview at the Los Angeles District Office the applicant admitted that he had been previously removed from the United States. Despite counsel's assertion that the applicant has maintained work authorization during his employment in the United States, the record reflects that, while the applicant has been employed in the United States since 1996, he has only maintained work authorization since January 2000.

On appeal, counsel also contends that the director failed to consider the emotional hardship the applicant's wife and children would suffer if he were denied permission to reapply for admission and that insufficient consideration was given to non-economic hardship which would result from the applicant's removal. Counsel asserts that [REDACTED] and the applicant's children would suffer emotionally because [REDACTED] would lose the companionship of her spouse and the children would be deprived of an emotional bond with their father. Counsel asserts that the applicant has struggled to develop and maintain a certain standard of living that would serve to benefit his wife and children. Counsel asserts that the applicant and his spouse have purchased a home and his wife would be unable to pay the mortgage payments and support the family without his assistance. Counsel asserts that the applicant is essentially responsible for the financial support of his wife and children, as well as his parents who reside in Mexico. Counsel asserts that the applicant does not have family members in Mexico who would be able to assist him in adjusting to and establishing a new life there. Counsel asserts it would be unlikely that [REDACTED] and the children would be able to see the applicant in Mexico more than once per year.

The applicant, in his affidavit, states that his wife, children and mother are all dependent upon him financially and emotionally. He states that his wife and children would be devastated if he had to go back to Mexico.

[REDACTED], in her statement, asserts that the applicant is a hard-working man who takes care of his family and that, as the breadwinner in the family, he adequately provides for her and the children. She states that the children could not have done well in school without the applicant's assistance.

The applicant's parents, in their affidavits, state that they rely upon the applicant for money, especially since the applicant's mother requires medicine for hypertension after she underwent surgery. They state that there is no work in Mexico and the conditions in which they live are deplorable.

Counsel asserts that if [REDACTED] and the applicant's children accompanied the applicant to Mexico they would be forced to give up American customs and the language in which they have been socialized. Counsel asserts that the children would be forced to adjust to a new language and to customs with which they are completely unfamiliar, especially when they are progressing in their current learning environment. Counsel asserts that the children are taking classes for gifted children and have received Presidential Commendation Awards. Counsel asserts that the children would suffer because all of their relatives and friends live in the United States.

Counsel asserts that the applicant's oldest daughter is experiencing extreme depression and grief upon realizing that her father may be removed from the United States because of the close bond that they share. He states that she has developed extreme symptoms of despair and has had difficulty functioning in school and in

her social environment. He asserts that she has been undergoing therapy concerning the possibility of the loss of her father.

The applicant's eldest daughter, in her affidavit, states that the applicant is very important to her and she can count on him to share her feelings. She states that if the applicant were sent back to Mexico she would probably feel depressed.

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 7th Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th 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 (9th 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 (5th 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, the applicant's children, the absence of any criminal record, his payment of U.S. taxes and an approved immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States, his removal order, an illegal reentry into the United States after having been removed and his inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain entry into the United States by presenting fraudulent documentation in 1996. The AAO notes that since the applicant is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act he requires a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The record reflects that the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) has been denied, but that no appeal has been filed from this decision.

The applicant in the instant case has multiple immigration violations. The AAO finds that the applicant's marriage and approval of his immigrant petition occurred after the applicant was placed into proceedings. The AAO finds these factors to be "after-acquired equities" and that any favorable weight derived from the applicant's marriage and approved immigrant visa petition must be 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 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.