



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 28 2007

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 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 January 13, 1997, applied for admission at the San Ysidro, California Port of Entry. The applicant presented a Mexican passport with a fraudulent I-551 Lawful Permanent Resident Stamp 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 January 17, 1997, the immigration judge ordered the applicant removed from the United States. The applicant returned to Mexico the same day. On January 10, 1998, the applicant married her lawful permanent resident spouse, [REDACTED] in Canoga Park, California. On January 16, 1998, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on August 21, 2001. On January 9, 2006, the applicant filed the Form I-212. On March 6, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On July 11, 2006, the applicant appeared at the Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. The applicant testified that she reentered the United States without inspection in January 1997. 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 she 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 her lawful permanent resident spouse and son.

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 May 22, 2006.

On appeal, counsel contends that the director minimized the applicant's equities and that she is eligible for permission to reapply for admission. *See Counsel's Brief*, dated June 23, 2006. In support of his contentions, counsel submits the referenced brief, affidavits, a psychological report, financial documentation and copies of documentation previously provided. 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 was removed from the United States and immediately thereafter reentered the United States without inspection or parole. 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 record reflects that [REDACTED] is a native and citizen of Mexico who became a lawful permanent resident in 1990. The applicant and [REDACTED] do not have any children together. The applicant has a 17-year old son from a previous relationship who is a native and citizen of Mexico who became a lawful permanent resident in 2006. The applicant has a 25-year old son from a previous relationship who is a native and citizen of Mexico who does not appear to have any legal status in the United States. The applicant is in her 40's and [REDACTED] is in his 30's.

On appeal, counsel asserts that the director minimized the applicant's equities by citing, partly, to cases outside the Ninth Circuit Court of Appeals (Ninth Circuit). Counsel asserts that the director improperly cited to case law outside of the Ninth Circuit since the case arises in the Ninth Circuit. The Ninth Circuit, in *Carnalla-Munoz 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. The director's reference to the 7<sup>th</sup> Circuit Court of Appeals case, *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> Cir. 1991), in which the court held that less weight is given to equities acquired after a deportation order has been entered and 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, is appropriate in the circumstances. It is also noted that the director's citation to the Fifth Circuit Court of Appeals case, *Ghassan v. INS*, 972 F.2d 631, 634-35 (5<sup>th</sup> Cir. 1992), in which the court 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, is also appropriate. Since Ninth Circuit case law on the subject of "after-acquired equities" is minimal, citation to cases in other jurisdictions is helpful in determining the scope of the principle of "after acquired equities." 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 and that the director was correct in according diminished weight to the applicant's "after-acquired equities."

On appeal, counsel contends that the director incorrectly paraphrased the holdings of many cases and utilized mischaracterizations of holdings to minimize the equities presented by the applicant. Counsel fails to identify the cases to which he refers and, as discussed above, the AAO has found that, the precedent legal decisions

cited by the director establish the general principle that “after-acquired equities” are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

The AAO notes that counsel asserts on appeal that the director incorrectly read sections 212(a)(6)(A) and 212(a)(9)(A) of the Act and did not consider that Congress created and implemented section 245(i) of the Act which permits certain immigrants who are unlawfully present in the United States to adjust status and become lawful permanent residents. However, the AAO also finds that by filing the Form I-212 the applicant may not seek a waiver of grounds of inadmissibility other than those pursuant to section 212(a)(9)(A) and 212(a)(9)(C) of the Act. *See* 8 C.F.R. § 212.2. The AAO has no authority to review the decision of the director in regard to section 245(i) of the Act. The only issue before the AAO is whether the applicant, who was physically removed from the United States and immediately thereafter reentered the United States and is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, is eligible for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

On appeal, counsel asserts that the applicant should be permitted to remain with her family in the United States. Counsel asserts that the applicant’s lawful permanent resident son would be devastated by the separation if he were to remain in the United States. Alternatively, if the applicant’s lawful permanent resident son were to accompany the applicant to Mexico counsel contends that he would lose his lawful permanent resident status and that the relocation would undermine his plans for a college education and compromise his future. Counsel asserts that the applicant’s son’s Spanish is not sufficient to permit him to be able to attend college in Mexico and he does not have any experience with the educational system in Mexico. Counsel asserts that the applicant’s son has resided in the United States since he was a baby and considers himself to be an American. Counsel asserts that the resulting separation would cause the applicant and her son sadness and pain. Counsel asserts that the separation will be traumatic and the applicant’s son’s studies will be negatively affected by his emotional suffering.

Counsel asserts that [REDACTED] would not be able to return to Mexico with the applicant because he would have to remain in the United States to continue his employment, which would provide a means to support himself, the applicant and the applicant’s lawful permanent resident son. Counsel asserts that [REDACTED] would have no hope of finding any employment that pays more than poverty-level wages in Mexico due to his age, limited education and Mexico’s economy. Counsel asserts that [REDACTED] Marin has resided in the United States for the past 20 years and has become accustomed to the American way of life. Counsel asserts that [REDACTED] came to the United States to seek a better life, which he has found, and it would be devastating to him to have to go back to a life of poverty in Mexico.

Counsel asserts that the applicant originally entered the United States without inspection in 1989 and has resided in the United States for a period of 17 years during which she has held a steady job and has paid taxes. Counsel asserts that the applicant has no hope of finding any employment that pays more than poverty-level wages in Mexico due to her age, limited education, Mexico’s economy and her gender. Counsel asserts that the applicant only has one brother left in Mexico and he would be unable to assist her due to his own family commitments. Counsel asserts that the applicant would be reliant on money [REDACTED] would send to her from the United States, which would be difficult because [REDACTED] would have to support two households. Counsel asserts that the reason the applicant reentered the United States after having been removed was because her children were in the United States and that, if she had not returned, her family would have been permanently separated. Counsel asserts that the applicant is a good mother and a person of

good moral character who has never been arrested by the police or received public assistance. Counsel asserts that the applicant has on-going responsibilities to her spouse, children and her employer in the United States.

The applicant's lawful permanent resident son, in his June 21, 2006, statement, indicates that the applicant is the most important person in his family and it would be extremely hard and sad to lose someone who has cared for him since the day he was born. The applicant's son states that he would not accompany the applicant to Mexico and that he has lived in the United States since he was a baby. The applicant's son states that he does not want the applicant to live alone in Mexico and her removal would bring the family great pain.

, in his November 8, 2005, statement, indicates that he considers the applicant's children to be like his own and that the applicant has always cared for the children and their family. He states that the applicant is in charge of the household and that he would suffer greatly if he were separated from her because he is very close to her. He states that the whole family would suffer because she is the pillar of the family and no one else could provide him and his stepchildren with the care that they need. He states that it would be hard for the applicant in Mexico because of the economic and social conditions, even though she has a brother who resides there.

A psychological report written by a licensed marriage and family therapist and based on a single interview with the applicant, the applicant's spouse, and the applicant's lawful permanent resident son, recommends the family be permitted to remain intact in their present place of residence. The psychological report states that the family is a close-knit one with a high degree of attachment among its members, which upholds the traditional values of Middle America. The psychological report states that the family has formed a stable, wholesome family life with ongoing, intense interchanges among them, characterized by caring, support, affection, and positive, growth-promoting conflict-resolution and child-rearing methods. The report states that the marriage has given life additional meaning in his roles as a partner and father-substitute. The report continues to states that the family appears realistic in its assessment of the labor and educational opportunities existing in Mexico, which is rather dim. The report concludes that the option of relocating only the applicant to Mexico would be extremely painful and the family would be, *de facto*, disintegrated. In that it is based on a single interview, the AAO notes that the psychological report does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional. As a result, the marriage and family therapist's findings are speculative, diminishing the evaluation's value to a finding of extreme hardship. Moreover, the AAO will not consider the therapist's opinion about the labor and educational opportunities available to the applicant and her spouse in Mexico as the record does not establish her expertise in these areas.

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 favorable factors in this matter are the applicant's lawful permanent resident spouse and child, the absence of any criminal record, 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, her 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 1997, and an illegal reentry into the United States after having been removed.

The applicant in the instant case has multiple immigration violations. The AAO finds that the applicant's marriage, the applicant's son's adjustment of status to that of lawful permanent resident, and approval of her 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, her son's adjustment of status to that of lawful permanent resident, or her 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.

The AAO notes that since the applicant is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act she may need to file an Application for Waiver of Grounds of Inadmissibility (Form I-601).

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish 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.