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

**PUBLIC COPY**

[REDACTED]

H4

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 12 2007**

IN RE:

Applicant:

[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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center 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 entered the United States without a lawful admission or parole on or about May 5, 1987. On July 9, 1997, the applicant filed an Application for Asylum and for Withholding of Deportation (Form I-589) with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). On August 14, 1997, the applicant was interviewed for asylum status. Her application was referred to the immigration court, and on August 28, 1997, a Notice to Appear (NTA) for a hearing before an immigration judge was served on her. On August 13, 1998, an immigration judge found the applicant removable pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(A)(i), for having been present in the United States without being admitted or paroled, and granted her voluntary departure until October 13, 1998, in lieu of removal. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which on May 31, 2002, affirmed, without opinion, the immigration judge's decision. The applicant filed a Motion to Reopen or Reconsider (MTR), which was denied by the BIA on July 31, 2002. On January 5, 1999, a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that she appear at the Los Angeles District Office in order to be removed from the United States. The applicant failed to surrender for removal or depart from the United States. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 U.S. citizen spouse and children.

The Director determined that the applicant was inadmissible pursuant to section 212(a)(6)(A)(i) of the Act, and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director then denied the Form I-212 accordingly. See *Director's Decision* dated December 8, 2005.

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 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 aliens 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.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, counsel submits a brief, letters of recommendation regarding the applicant's good moral character from family and friends, and school reports for the applicant's children. In his brief, counsel alleges that the Director abused his discretion in denying the applicant's Form I-212. Counsel states that the applicant was misguided by an individual who promised her help to stay in the United States via legal means, and that the immigration judge found her to be a person of good moral character. In addition, counsel states that the applicant was not brought to the Service's attention for any criminal conduct or by multiple immigration violations. Additionally, counsel states that the applicant entered the United States over eighteen years ago and has sought to peacefully and legally remain with her family, and her long presence in the United States should have been mentioned as a positive factor. Counsel further states that the Director's statement that the applicant has shown "disregard for the laws of this country" is not true. Counsel states that individuals who had exhibited severe disregard for the law as evidenced by their criminal convictions or multiple deportations were afforded favorable grants by the Service. Counsel states that it is arbitrary for the Director to fail to consider the applicant's lawful activities as positive factors. Furthermore, counsel states that proper consideration was not given to the applicant's family responsibilities. Counsel points out that the applicant is the mother of two U.S. citizens and that she has been together with her U.S. citizen spouse for over eleven years. Counsel further states that the applicant's family is incredibly close and that the Director's disregard for the institution of the family and the needs of her family establishes an abuse of discretion. Counsel states that the applicant does not need to show that her absence will create a hardship to her family that will rise to the level of exceptional or extremely unusual but only that the denial of the Form I-212 will create hardship to her family. Finally, counsel states that the applicant and her family have expressed and indicated the applicant's need for being in the United States with them, and that the Director failed to conduct a proper analysis of all the important discretionary factors necessary to make a proper decision, and requests that the Director's decision be overturned.

Counsel statement that the applicant was misguided by individuals who promised to help her stay in the United States through legal means is not persuasive. The applicant signed the Form I-589 and it was her responsibility to review the application and make sure that the information provided was true, correct and that she knew for what she was applying. Although the applicant does not have a criminal record, she has shown disregard for the laws of the United States by entering illegally, not posting a bond as instructed by an immigration judge, working without authorization and remaining in the United States after her voluntary departure order became a final order of removal.

The AAO agrees with counsel in that the applicant does not need to establish that a particular level of hardship would result to a qualifying family member if the application were denied. Unlike sections 212(g),

(h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. The AAO will consider the hardship to the applicant's U.S. citizen spouse and children, but it will be just one of the determining factors.

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 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 court 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 applicant in the present matter married her U.S. citizen spouse on August 13, 2005, approximately eight years after she was placed in removal proceedings and over three years after the BIA denied her MTR. The applicant's spouse should reasonably have been aware, at the time of their marriage, of the applicant's immigration violations and the possibility of her being removed. She now seeks relief based on that after-acquired equity. Therefore, hardship to her spouse will not be accorded great weight.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, her U.S. citizen spouse and children, the prospect of general hardship to her family, the letters of recommendation from family and friends regarding her good moral character and the absence of any criminal record

The AAO finds that the unfavorable factors in this case include the applicant's initial illegal entry into the United States, her failure to depart the United States after she was granted voluntary departure and after her voluntary departure order became a final order of removal, her periods of employment without authorization and her lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee, supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

The applicant's actions in this matter cannot be condoned. Her equity, marriage to a U.S. citizen, gained after she was placed in removal proceedings, can be given only minimal weight. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

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