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

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[Redacted]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 20 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:

[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 Mexico who, on November 10, 1998, applied for admission to the United States at the Calexico, California Port of Entry. The applicant presented a Form I-586 Border Crossing Card bearing the name [REDACTED]. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain entry into the United States by presenting fraudulent documentation. On November 10, 1998, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). On September 21, 2002, the applicant married his U.S. citizen spouse, [REDACTED] in California. On March 31, 2003, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on April 27, 2004. On December 12, 2005, the applicant filed the Form I-212.

The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), as an alien seeking admission within five years of having been ordered removed under section 235(b)(1) of the Act. 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 reside in the United States with his U.S. citizen spouse and children.

The director determined that the applicant was inadmissible pursuant to sections 212(a)(6)(A), 212(a)(9)(A) and 212(a)(9)(C) of the Act, 8 U.S.C. §§ 1182(a)(6)(A), 1182(A)(9)(A) and 1182(a)(9)(C), as an alien present in the United States without inspection or admission, for seeking admission after having been removed and for reentering the United States without admission after having been removed. The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. See *Director's Decision* dated July 26, 2006.

On appeal, counsel contends that the applicant was not arrested and deported or turned back at the port of entry near San Ysidro, California. Counsel contends that the applicant has established favorable factors to warrant a favorable exercise of discretion. See *Counsel's Brief*, dated August 22, 2006. In support of his contentions, counsel submits the referenced brief and a psychological report. The entire record was reviewed in rendering a decision in this case.

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

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years 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.
- (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 on a 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 of Homeland Security] has consented to the alien's reapplying for admission.

The director based the finding of inadmissibility under section 212(a)(9)(A) of the Act on the applicant's admission and the record reflecting that he was removed under the name ██████████ in 1998. Counsel's brief is unclear as to whether he contests the director's finding of inadmissibility. Counsel asserts that the applicant was not arrested and deported nor was he turned away at the port of entry near San Ysidro, California. The record reflects that, on November 10, 1998, the applicant was ordered removed from the United States pursuant to section 235(b)(1) of the Act at the Calexico, California Port of Entry. The applicant was returned to Mexico. The applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission after having been previously removed on an unknown date but prior to September 21, 2002, the date on which he married ██████████ in Huntington Park, California. The AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(i) of the Act and, therefore, must receive permission to reapply for admission.

The record reflects that ██████████ is a native of El Salvador who became a lawful permanent resident in 1987 and a naturalized U.S. citizen in 1995. The applicant and ██████████ have a four-year old son and a two-year old daughter who are U.S. citizens by birth. The applicant is in his 40's and ██████████ is in her 30's.

The AAO now turns to a consideration of positive and adverse factors in the present case.

Counsel, on appeal, asserts that the applicant has been in the United States for seven years and is married to a U.S. citizen. Counsel asserts that the applicant has an approved Form I-130 and that his wife and children would suffer the hardship of separation from the applicant for a long period of time and that they are emotionally depressed at just the thought of losing the applicant.

A psychological report written by a licensed marriage and family therapist, based on two interviews with Ms. ██████████ and one interview with the applicant, recommends that the couple be permitted to remain in the United States where ██████████ not only has her sense of groundedness, but where she can most effectively confront her own ego issues and the impact of her childhood so that she can maintain equilibrium and not face the destabilization and probable disintegration that could come either by leaving the United States or by staying in the United States without the applicant. The psychological report states ██████████ is still quite upset about her parents' divorce and suffered stress as a result of her parents' disagreement over the rearing of

their children and over household issues. The psychological report states [REDACTED] is very sensitive to criticism from friends or relatives and, probably because she was not in school as a youth herself, she is very concerned about her children's grades and whether there will be a good environment for them in which to study. The report states that [REDACTED] is very dependent on the applicant and her family for both her basic identity as well as the logistical aspects of support. It states that [REDACTED] would be adrift if she had to manage these issues on her own and would not be able to successfully manage the children without the support of the applicant. The report states that [REDACTED] should receive psychodynamic counseling so that she can confront the impact of her past and develop an adequate self structure so that she feels the maturity and independence of an adult. Despite the fact that [REDACTED] family is from El Salvador, the report continues to state that [REDACTED] would not be able to adapt to the transition of returning to Mexico for several reasons, including the fact that the place has the emotional baggage of the difficulties she experienced as a child. The report states that [REDACTED] has now developed both an acculturation and a sense of stability in the United States that is her only definable reality in which she can cope. In that it is based on two interviews with [REDACTED] and one interview with the applicant, 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 AAO finds the marriage and family therapist's findings to be speculative, diminishing the evaluation's value to a finding of hardship.

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 these precedent legal decisions to 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 two U.S. citizen children, and an approved immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's illegal reentry into the United States after having been removed; his inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to obtain entry into the United States by presenting fraudulent documentation in 1995; and his extended unlawful presence and employment in the United States.

The applicant in the instant case has multiple immigration violations. The AAO finds that the applicant's marriage, the birth of his children and approval of his immigrant petition occurred after the applicant was ordered removed, and are "after-acquired equities." Any favorable weight derived from them must, therefore, be accorded diminished weight. In that 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 applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted.

The AAO notes that the applicant is also inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for entering the United States illegally after having been ordered removed.

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.