

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*H4*



FILE:



Office: PHOENIX, AZ

Date:

**APR 03 2008**

IN RE:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Mexico who was deported from the United States on October 7, 1984 and reentered the United States without inspection in 1986. The applicant was found to be inadmissible to the United States pursuant to 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant now 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.

The district director determined that the applicant failed to establish that a favorable exercise of discretion is warranted and denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). *District Director's Decision*, dated July 19, 2006.

On appeal, counsel asserts that the district director is wrong in his assertions and conclusions. *Form I-290B*, received August 21, 2006.

Section 212(a)(9)(A) of the Act provides, in pertinent part:

(A) Certain alien 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

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.

Counsel states that the district director does not recognize that the applicant's deportation order was more than 22 years ago. *Form I-290B*. The AAO notes that the applicant did not spend the requisite ten years outside of the United States, therefore, the approval of Form I-212 is necessary for him to adjust status.

Where an applicant is seeking discretionary relief from removal or deportation and the courts are required to weigh favorable equities or factors against unfavorable factors, many have repeatedly upheld the general principal that less weight is given to equities acquired by an alien after an order of deportation or removal has been issued. The AAO notes that the applicant's Form I-212 involves a similar weighing of equities or favorable factors against unfavorable factors in order to determine whether to grant discretionary relief.

In *Garcia-Lopez v. INS*, 923 F.2d 72 (7<sup>th</sup> Cir. 1991), for example, the Seventh Circuit Court of Appeals (Seventh Circuit) reviewed a Board of Immigration Appeals (Board) denial of an alien's request for discretionary voluntary departure relief. The Seventh Circuit found that the Board's denial rested on discretionary grounds, and that the Board had weighed all of the favorable and unfavorable factors and stated the reasons for its denial of relief. The Seventh Circuit affirmed the general principle that less weight may be accorded to equities acquired after an order of deportation is issued, and the Seventh Circuit concluded that the Board had not abused or exercised its discretion in an arbitrary or capricious manner.

In *Ghassan v. INS*, 972 F.2d 631, 634-35 (5<sup>th</sup> Cir. 1992), the Fifth Circuit Court of Appeals (Fifth Circuit) reviewed a section 212(c), waiver of deportation, discretionary relief case that involved the balancing of favorable and unfavorable factors. The Fifth Circuit found no abuse of discretion in the Board's weighing of equitable factors against unfavorable factors in the alien's case, and the Fifth Circuit affirmed the principle that as an equity factor, it is not an abuse of discretion to accord diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien spouse's possible deportation.

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 case include the applicant's U.S. citizen spouse, six U.S. citizen children, an approved Form I-130 (Petition for Alien Relative), 2004 and 2005 joint federal tax returns, and hardship to the applicant and his family. The applicant's friend of 15 years states that the applicant is loving and caring with his children, a wonderful husband, and an honest person. *Statement of [REDACTED] dated April 6, 2006*. The record includes other letters from friends and family which attest to the applicant being a good father and having good character. The record includes letters related to the applicant's employment. The record also raises concerns about the ability of the applicant's spouse to function as a parent in the absence of the applicant.

A social worker from the applicant's children's school states that the applicant has always been involved in the education, welfare and care of his children. *School Social Worker's Letter*, at 1, dated April 10, 2006. She observes that the applicant's spouse previously experienced frequent periods of instability as a single parent and that the instability damaged her oldest son. *Id.* The social worker reports that the applicant's presence has made the difference with the children born to him and his spouse and that he's necessary to the family's stability. *Id.* at 2. She describes the applicant as "the glue that holds...[the] family together" and

that the applicant is “the hope we have for...[the] children’s future.” *Id.* The social worker indicates that she has known the applicant since 1999 when he came to his children’s school seeking financial help so that he could take one of his children to the doctor. *Id.* at 1. The record includes a letter from a family therapist working for the Pascua Yaqui Tribe, which states that the tribe provides counseling to the applicant’s family, the applicant and his spouse appear open to change, the tribe assists the family in dealing with “severe economic hardship”, the applicant’s spouse is being provided with counseling to help her remain sober, and the children appear to be bonded to their parents. *Letter from [REDACTED] CPC Family Therapist*, undated. The record indicates that the applicant’s seven U.S. citizen family members would experience significant hardship without the applicant. The AAO notes that “after-acquired equities” are accorded weight, albeit diminished weight. The “after-acquired equities” include the applicant’s U.S. citizen family members, his employment and the approved I-130 petition.

The AAO finds that the unfavorable factors in this case include the applicant’s entrance without inspection, his period of unauthorized stay, his conviction for petty theft on August 24, 1984, his conviction for disorderly conduct based on an April 17, 2002 arrest, his conviction for endangerment with one prior domestic violence conviction in the last 60 months (the prior “domestic violence” conviction was the aforementioned disorderly conduct conviction) based on an October 7, 2002 arrest, and his arrests for obstructing investment (May 10, 1991) and disorderly conduct (April 22, 1996). In considering the negative weight of the applicant’s convictions, the AAO notes that the applicant’s petty theft conviction was over 23 years ago. In addition, the applicant’s disorderly conduct conviction (i.e. prior “domestic violence” conviction) involved a situation where the applicant and his spouse were arguing and no physical assault occurred. *Arresting Officer’s Probable Cause Statement*, dated April 17, 2002. The AAO also notes that the applicant’s conviction for endangerment involved a situation where he was at work, his spouse left their children at home and his spouse was apparently dealing with serious alcohol problems at the time. *Maricopa County Sheriff’s Office Report*, at 6, dated December 17, 2001.

In regard to rehabilitation, the applicant completed a 29 session domestic violence intervention program which fulfilled his court obligation. *Letter from [REDACTED] CPC, Violence Intervention Program*, dated May 5, 2003. There is no indication that the applicant has been arrested since October 7, 2002. Counsel asserts that the applicant’s entry without inspection and period of unauthorized stay should not be weighed against the applicant as he is applying for adjustment of status under section 245(i) of the Act. *Form I-290B*. The AAO notes that the Form I-212 application is adjudicated independently from the applicant’s adjustment of status application. Therefore, the applicant’s entry without inspection and unauthorized stay will be considered as unfavorable factors.

Counsel states that the district director mentions arrests in his decision that were not in the March 21, 2006 notice of intent to deny and he did not give the applicant an opportunity to respond. *Id.* The AAO notes the merits of counsel’s point. However, the applicant has been afforded an opportunity to submit documentation with regard to these arrests on appeal and has failed to do so. Furthermore, the record includes notes from the officer who conducted the applicant’s adjustment of status interview that reflect that the applicant admitted to these arrests.

The AAO finds that the crimes and immigration violations committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.