

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

HL



FILE:



Office: CALIFORNIA SERVICE CENTER Date: **APR 22 2008**  
[consolidated therein]

IN RE:

Applicant:



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:

SELF-REPRESENTED

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 after removal 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 record reflects that the applicant is a native and citizen of Mexico, who entered the United States on August 18, 1995, by presenting a Resident Alien Card (Form I-551) in someone else's name. On August 30, 1995, an immigration judge ordered the applicant deported to Mexico. On the same day, the applicant was deported from the United States. On October 17, 1996, the applicant reentered the United States without inspection. On August 1, 1997, the applicant married [REDACTED], a lawful permanent resident of the United States, in California. On September 12, 1997, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved. On May 10, 1998, the applicant's son, [REDACTED], was born in California. On May 3, 2000, the applicant's son, [REDACTED], was born in California. On January 29, 2006, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On June 1, 2006, the applicant's daughter, [REDACTED], was born in California. On August 4, 2006, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On January 31, 2007, the Director found that "[a]s a result of [the applicant's] reentry into the United States without inspection or permission, [she is] inadmissible to the United States, subject to the provisions of section 212(a)(9)(C)(i)(II) of the [Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II)] and [she does] not qualify for an exemption." *Director's Decision*, dated January 31, 2007. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for her removal from the United States. She 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 with her lawful permanent resident husband and three United States citizen children.

The AAO finds that the Director improperly determined that the applicant was ineligible under section 212(a)(9)(C)(i)(II) of the Act, and she improperly denied the applicant's Form I-212. An Office of Programs Memorandum titled, Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Act, states that section 212(a)(9)(C)(i)(II) "applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997." See *Memorandum by Paul W. Virtue, Acting Executive Associate Commission, Office of Programs, dated March 31, 1997*. The AAO notes that the applicant's illegal reentry on October 17, 1996, does not make her inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and therefore, she is not subject to the provisions of section 212(a)(9)(C) of the Act. However, the AAO finds that the applicant is subject to the provisions of section 212(a)(9)(A) of the Act because of her deportation from the United States.<sup>1</sup>

---

<sup>1</sup> The AAO conducts the final administrative review and enters the ultimate decision for USCIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case *de novo* as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in *de novo* review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision.

Section 212(a)(9). Aliens previously removed.-

(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.

Section 212(a)(9)(C). Aliens unlawfully present after previous immigration violations.-

(i) In general.- Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's embarkation at a place outside the United States or attempt to be readmitted

---

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

from a foreign contiguous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

On appeal, the applicant states that when she initially entered the United States she "was trying to find a better future for [herself]. At the time [she] was the one supporting [her] parents and with what [she] was earning, well it wasn't enough to support [her]self [or her] parents. [She] was desperate and [she] let [her]self do this foolish thing." *Statement from the applicant*, dated February 13, 2007. The AAO notes that the applicant has been residing in the United States for many years without authorization and that is an unfavorable factor. The applicant is "married to a Permanent Resident and [they] have three U.S. citizen children whom [she] love[s] dearly. [She is] a big part of their [lives] and separating [their] family will cause extreme emotional hardship especially to [her] children.... [She is] greatly involve[d] in their education too. Since [her] husband works, [she is] the one who is involve[d] in their education." *Id.* [REDACTED] states that the applicant "has been volunteering at [her children's school] since August 2005. [The applicant] has volunteered in classroom settings, school wide events, and has been [their] PTSA Vice President for this entire school year.... [The applicant] has been a great asset in [their] school always willing to assist, volunteer and express her opinions to better serve the needs of all [their] students.... [The applicant] has shown to be a highly motivated parent in the community and has earned admiration of many parents and staff." *Letter from [REDACTED] School Counselor, Paramount Unified School District*, dated June 30, 2006. The applicant states that "[they] are a family that want to have a better life and future for [their] children.... [She has] learned from [her] mistakes and [she asks] to please reconsider." *Statement from the applicant, supra.* The AAO notes that 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. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's husband and children, but it will be just one of the determining factors.

The record of proceedings reveals that on August 30, 1995, an immigration judge ordered the applicant deported from the United States. On the same day, the applicant was deported from the United States. On October 17, 1996, the applicant reentered the United States without inspection. Based on the applicant's previous order of deportation, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

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.*

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 BIA denial of an alien's request for discretionary voluntary departure relief. The Seventh Circuit found that the Board of Immigration Appeals (BIA) denial rested on discretionary grounds, and that the BIA 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 BIA had not abused or exercised its discretion in an arbitrary or capricious manner.

In *Bothyo v. Moyer*, 772 F.2d 353, 357 (7<sup>th</sup> Cir. 1985), the Seventh Circuit reviewed a discretionary stay of deportation case that weighed and balanced favorable and unfavorable factors. The Seventh Circuit stated that an alien's marriage to a lawful permanent resident did not necessitate the granting of a stay of deportation because the marriage occurred after deportation proceedings had commenced and after an Order to Show Cause (OSC) had been issued against the alien. The Seventh Circuit then affirmed the general principle that an "after-acquired equity" need not be accorded great weight by a district director in his or her consideration of discretionary weight.

In *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1006 (9<sup>th</sup> Cir. 1980), the Ninth Circuit Court of Appeals (Ninth Circuit) reviewed a discretionary suspension of deportation case. The Ninth Circuit affirmed the principle that post-deportation equities are entitled to less weight in determining hardship. In doing so, the Ninth Circuit referred to the 1980 decision, *Wang v. INS*, 622 F.2d 1341, 1346 (9<sup>th</sup> Cir. 1980) (overruled on unrelated grounds). In *Wang*, the alien sought discretionary relief and a finding of extreme hardship through a motion to reopen deportation proceedings. The Ninth Circuit held in *Wang*, that "[e]quities arising when the alien knows he is in this country illegally, e.g. after a deportation order is issued, are entitled to less weight than equities arising when the alien is legally in this country."

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 BIA'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 hardship to a spouse and for purposes of assessing favorable equities in the exercise of discretion.

The favorable factors in this matter are the applicant’s lawful permanent resident spouse and her United States citizen children, general hardship they may experience, no criminal record, a letter of recommendation, a history of paying taxes, and the approval of a petition for alien relative. The AAO notes that the applicant’s marriage to her husband occurred after her order of deportation and is an after-acquired equity. As an after-acquired equity this factor will be given less weight.

The AAO finds that the unfavorable factors in this case include the applicant’s initial entry by presenting a Form I-551 in someone else’s name, her illegal reentry into the United States subsequent to her August 30, 1995 deportation, and periods of unauthorized presence.

The applicant’s actions in this matter cannot be condoned. 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 that 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.