

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H4

[REDACTED]

FILE:

[REDACTED]

Office: SACRAMENTO, CA  
(RELATES)

Date: **AUG 07 2008**

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 Acting Field Office Director, Sacramento, California, 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 whose then lawful permanent resident father, [REDACTED] on May 5, 1993, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on May 27, 1993. On July 6, 1999, the applicant attempted to enter the United States at the San Ysidro, California Port of Entry. The applicant presented a counterfeit Form I-512, Authorization for Parole of an Alien into the United States, under the name "[REDACTED]" The applicant was found to be inadmissible 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 admission to the United States by fraud. The applicant provided a false name and date of birth to immigration officers. On July 7, 1999, 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), under the name "[REDACTED]" On July 8, 1999, the applicant attempted to enter the United States at the San Ysidro, California Port of Entry. The applicant presented an I-551, Resident Alien Card, bearing the name "[REDACTED]" The applicant was found to be inadmissible 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 admission to the United States by fraud. The applicant provided a false name and date of birth to immigration officers. On July 9, 1999, the applicant was expeditiously removed for a second time from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1), under the name "[REDACTED]" The applicant reentered the United States without permission or admission on an unknown date, but prior to May 1, 2001, the date on which she gave birth to her U.S. citizen son in Sacramento, California. On November 19, 2005, the applicant's father became a naturalized U.S. citizen. On January 11, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. On October 11, 2006, the applicant's Form I-485 was denied. On December 19, 2006, the applicant filed a second Form I-485. On the same day, 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 who is inadmissible for 20 years after a subsequent removal. 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 reside in the United States with her U.S. citizen father, children, siblings and lawful permanent resident mother and siblings.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision* dated July 31, 2007.

On appeal, counsel contends that the applicant does not require permission to reapply for admission. Counsel contends that the field office director improperly denied the applicant's Form I-212 because she failed to evaluate or give the proper weight to all the relevant favorable factors and gave undue weight to supposedly unfavorable factors. *See Counsel's Brief*, dated November 1, 2007. In support of his contentions, counsel submits the referenced brief and an article by the League of Women Voters(LWV). The entire record was considered 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 Secretary has consented to the alien's reapplying for admission.  
[emphasis added]

Counsel, on appeal, asserts that the applicant is not required to apply for permission to reapply for admission into the United States because it has been more than five years from the date of her removal. An applicant does not require permission to reapply for admission *only* if the applicant remained outside the United States for the entire period during which he or she was deemed inadmissible pursuant to section 212(a)(9)(A) of the Act. 8 C.F.R. § 212.2. Furthermore, the AAO finds that the applicant is inadmissible for a period of *twenty years* because she was removed from the United States on two occasions. In the instant case, the applicant has not remained outside the United States for the period of her inadmissibility and she is, therefore, required to apply for permission to reapply for admission into the United States. •

Counsel asserts that the applicant has never been formally charged with misrepresentation. However, the record reflects that the applicant was charged and removed from the United States as inadmissible pursuant to section 212(a)(6)(C)(i) of the Act on both occasions she attempted to enter the United States. *See* Notices and Orders of Expedited Removal (Forms I-860), dated July 7, 1999, and July 9, 1999. Furthermore, a criminal conviction or formal charges for misrepresentation is not a requirement in finding an applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Counsel further asserts that the applicant's attempts to enter the United States on two occasions with false or invalid documents do not involve misrepresentation under the law and do not render her inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. He asserts that the field office director's failure to request the filing of an Application for Waiver of Inadmissibility (Form I-601) by the applicant suggests that she does not need to apply for a waiver of inadmissibility on the grounds of alleged misrepresentation. He asserts that the failure to request a Form I-601 represents an implicit recognition that, whatever misrepresentations were made by the applicant, they were retracted in a timely manner. Counsel contends that, as dictated by the Ninth

Circuit Court of Appeals' (Ninth Circuit) decision in *U.S. v. Karaouni*, 379 F.3d 1139 (9<sup>th</sup> Cir. 2004), the applicant's presentation of a false lawful permanent resident card does not constitute misrepresentation. He asserts that the applicant admitted the invalidity of the documents as soon as immigration officers questioned her about the documents. Counsel asserts that the cited case finds that even the presentation of a false document at the border, by itself, is not a misrepresentation. However, *U.S. v. Karaouni*, refers to a criminal conviction for making a false claim to U.S. citizenship and has no bearing on the applicant's case.

The Department of State Foreign Affairs Manual (FAM) offers guidance regarding the interpretation of the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act, stating in part; (1) a misrepresentation can be made orally or in writing, (2) silence or the failure to volunteer information does not in itself constitute a misrepresentation, (3) the misrepresentation must have been practiced on an official of the U.S. government, generally a consular or immigration officer, and (4) a timely retraction will avoid the penalty of the statute. Whether a retraction is timely depends on the circumstances of the particular case.

A timely retraction has been found only in cases where applicants used fraudulent documents *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984). In the instant case, the applicant retracted her claims to be a parolee and a lawful permanent resident only after having been placed into secondary inspection by immigration officials. Moreover, the applicant provided a false name to the immigration officers who questioned her and did not admit to her true identity at any point during her inspection. She was removed from the United States under this false identity. The applicant's use of a false identity throughout the inspection process undermines any contention that the applicant did not have the requisite intent to deceive and made a timely retraction.

Based on the record, the AAO finds that the applicant did not offer a timely retraction of her misrepresentations to immigration officers. The AAO finds that the applicant, by presenting fraudulent documents at the port of entry in order to obtain admission in 1999, is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for attempting to enter the United State by fraud.

The record reflects that the applicant is unmarried. The applicant has a seven-year old son and a two-year old daughter who are both U.S. citizens by birth. [REDACTED] is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 2005. The applicant's mother, [REDACTED] is a native and citizen of Mexico who became a lawful permanent resident in 1998. The applicant has a 45-year old brother, a 40-year old brother and a 38-year old brother who are all natives of Mexico who became lawful permanent residents in 1989, 1990 and 1990, respectively and naturalized U.S. citizens in 1996, 1997 and 2004, respectively. The applicant has a 43-year old brother and a 41-year old sister who are both natives and citizens of Mexico who became lawful permanent residents in 1990 and 1999, respectively. The applicant is in her 30's, [REDACTED] is in his 70's and [REDACTED] is in her 60's.

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

On appeal, counsel asserts that the field office director improperly denied the applicant's Form I-212 because she failed to evaluate or give the proper weight to all the relevant favorable factors and gave undue weight to supposedly unfavorable factors. Counsel asserts that the field office director erred in decrying the lack of evidence of rehabilitation of the applicant when the applicant's Form I-212 and Form I-485 are evidence of

intent to conform to and obey immigration laws. Counsel asserts that the field office director did not give the applicant's waiver application a meaningful and individualized evaluation, and that the applicant has been unfairly disqualified from becoming a lawful permanent resident for at least twenty years. Counsel asserts that the harsh consequences of removal of the applicant to the applicant and her whole family are substantial and outweigh the offense for which the waiver is required.

Counsel asserts that the applicant is a single mother of two U.S. citizen children who lives with three of her numerous siblings, all of whom are in or applying for lawful status in the United States. He asserts that the applicant first came to the United States in 1993 with her parents and has been attempting to legally immigrate since the filing of the Form I-130. He asserts that, at the time she made her attempts to reenter the United States, her whole family was in the United States and she was only 21 years old. He asserts that the applicant depends on her family in the United States, including her children's father who provides support in the form of \$500 per month. He asserts that the applicant has no criminal arrests or convictions. He asserts that the applicant has never received public assistance and is unlikely to become a public charge. He asserts that the applicant attends weekly services at a catholic church with her family. He asserts that the applicant is a hardworking employee, a loving and attentive mother, and a good sister, daughter and neighbor. He asserts that while the applicant admittedly showed poor judgment in her attempts to enter the United States, since her arrival, the applicant has shown that she deserves to be forgiven and that, as shown by the LWV article, the United States may have even derived a net benefit from her presence. He asserts that the applicant's Form I-485 indicates that the applicant is still trying to legally immigrate and would have done so before had U.S. law permitted it. He asserts that when the expense of retaining counsel is combined with filing fees and penalty fees, the applicant has made a considerable economic investment in complying with U.S. immigration law. He asserts that the applicant has shown extreme remorse for her youthful bad judgment, which evidences her rehabilitation.

Counsel asserts that none of the applicant's family is left in the Jalisco, the village from which the applicant's family comes. He asserts that because of the applicant's lack of training she will be without reasonable employment in Mexico. He asserts that the applicant would lose her job, and accumulated health and retirement benefits. He asserts that, even if the applicant is able to obtain employment, as a single mother she would not have anyone to care for her children. He asserts that if the applicant's children accompany her to Mexico, they will lose their father's presence in their lives. He asserts that the children would lose their right to be educated in the United States and would be unfairly handicapped for the rest of their lives. He asserts that the applicant's children would be unable to study past Sixth Grade in the family's village in Mexico, the applicant's son would be removed from a school environment in which he is now thriving and both children would lose the unquestionable benefit of growing up within a large, happy, extended family. He asserts that the children would miss the involvement of their grandparent's in their lives and would not be eligible for medical coverage in Mexico. He asserts that the applicant's parents will not receive the physical care and support that they will need when they can no longer live alone. He asserts that the applicant's father, whom she would be unable to visit for many years, is now 70 years old and already has diabetes.

Counsel asserts that to deny the applicant's Form I-212 would serve no government purpose except to be an example of the government's disregard for the family values. He asserts that though the applicant's unfavorable factors are not inconsequential, they are violations of civil immigration law and far from sufficiently grave to outweigh the favorable factors. He asserts that the applicant's admitted unauthorized employment in the United States is not an impediment as she is eligible to adjust status pursuant to section 245(i) of the Act.

The applicant, in her declaration, states that, if her application is denied, it will cause her family huge problems and hardship. She states that she has two U.S. citizen children. She states that she was never married to the children's father but that he is very close to the children and sees them every day. She states that the children's father gives her \$500 per month for their support and the children would effectively lose their father if they had to accompany her to Mexico. She states that she has no one in Mexico who could help her to establish herself or who could provide for her and her children. She states that her son has started school and loves it. She states that the village from which her family comes is very poor, with no cars and no middle or high school. She states that her children would only be able to obtain an education up to Sixth Grade in her village. She states that her children would suffer if they had to give up the opportunities they have in the United States. She states that her whole family resides in the United States and that her parents and some of her siblings live in Wisconsin, while several siblings and their families are in California. She states that her parents regularly visit the siblings in California. She states that she lives with her children in a house with three of her siblings. She states this arrangement enables the children to grow up in a close, loving extended family environment. She states that they all go to church together every week and raise their children with good family values and work ethic. She states that, as a single mother, she would be at a disadvantage without her family to help her. She states that her parents currently reside with her brother in Wisconsin but they may need to come and live in California soon. She states that her other siblings have families and complicated lives, so the task of caring for their parents will fall to her and the siblings with whom she resides. She states that her father has Medicare and both of her parents are in fairly good health for their age, although her father has diabetes. She states that it would be stressful for her parents if they had to worry about her and the children attempting to make a life in the terrible economic conditions of Mexico. She states that they would miss them terribly.

The applicant states that her removal was a long time ago, before she had children and had settled down. She states that she only used the false documents in order to return to the United States where her family was located. She states that she admitted that the documents were false as soon as immigration officers confronted her and she has never committed any other kind of immigration violation and has no criminal record.

A recommendation letter from the applicant's employer states that she has been employed as a janitor since August 2006 and is a hardworking, skilled and experienced employee. They state that if the applicant does not remain in the United States it would be a loss for their company to give up such a trustworthy and proven performer.

Counsel submits a copy of an LWV article entitled *Economic Aspects of Authorized and Unauthorized Immigration*. The article states that "a greater supply of immigrant workers and the resultant cheaper cost of labor increases the return to employers . . . ultimately creating an increased demand for workers . . . taken together they suggest that immigration, in the long run, has had only a small negative effect on the pay of America's least skilled and even that is arguable." It states that the effect of authorized and unauthorized immigrants on public-sector budgets is small. It states that taxes paid to the federal government and added productivity of the macro economy make immigration a net benefit to the country as a whole. It states that, on the whole, immigrants are young, mobile, hard workers who, for a variety of reasons, are willing to work at jobs shunned by native-born workers. It states that new arrivals will spend money in the United States and increase earnings for businesses.

The record reflects that the applicant has only been granted work authorization from February 28, 2006, until March 26, 2007. However, on the Biographical Information form (Form G-325) the applicant indicated that she had been employed in odd jobs since her entry into the United States.

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 7<sup>th</sup> Circuit Court of Appeals 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-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. 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 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.

As established by the record, the favorable factors in this matter are the applicant's U.S. citizen father, lawful permanent resident mother, two U.S. citizen children, three U.S. citizen siblings, two lawful permanent resident siblings, the general hardship the applicant and her family will suffer, the absence of a criminal

record, and the immigrant visa petition approved on her behalf. The AAO notes, however, that the birth of the applicant's children, and the adjustment of status to that of a lawful permanent resident of the applicant's mother and one of her siblings occurred after she was placed into proceedings. Accordingly, these factors are "after-acquired equities" and the AAO accords them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; her two attempts to enter the United States by fraud; her inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act for attempting to enter the United States by fraud; her illegal reentry into the United States after having been removed twice; and her extended unlawful presence and employment in the United States since her reentry.

The applicant in the instant case has multiple immigration violations. The totality of the evidence demonstrates that the favorable factors in the present matter are outweighed by the unfavorable factors.

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.