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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA  
[consolidated therein]

Date: FEB 11 2008

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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 after removal was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who initially entered the United States without inspection in November 1982. At some point, the applicant departed the United States. Based on the Petition for Alien Relative (Form I-130) filed by the applicant's wife on the applicant's behalf, the applicant reentered the United States without inspection in 1987. At some point, the applicant departed the United States. Based on the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485), the applicant reentered the United States without inspection in December 1988. On January 7, 1989, the applicant and Ms. [REDACTED] daughter, [REDACTED], was born in California. On February 13, 1990, the applicant and [REDACTED] daughter, [REDACTED], was born in California. On June 5, 1992, the applicant and [REDACTED] son, [REDACTED], was born in California. On March 9, 1994, an Order to Show Cause (OSC) was issued against the applicant. On March 28, 1994, an immigration judge ordered the applicant deported from the United States. On April 12, 1994, the applicant was deported from the United States. In June 1994, the applicant reentered the United States without inspection. On December 13, 1996, Ms. [REDACTED] became a United States citizen. On February 1, 1997, the applicant married [REDACTED]

in California. On January 27, 1998, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed a Form I-485. On September 25, 2001, the District Director denied the applicant's Form I-485 because the applicant failed to appear to three scheduled interviews. On October 22, 2001, the applicant's wife filed a motion to reopen the District Director's decision on the Form I-485. On February 2, 2004, the District Director reopened the applicant's Form I-485. On February 19, 2004, the applicant's Form I-130 was approved. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. He 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 his naturalized United States citizen spouse and three United States citizen children.

The District Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for being ordered removed under section 240 or any other provision of law and for having been convicted of a crime involving moral turpitude, respectively. Additionally, the District Director found that there was an insufficient amount of positive factors and she denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated April 3, 2006.

Section 212(a)(2)(A) of the Act states, in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude...or an attempt or conspiracy to commit such a crime...is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I)...of subsection (a)(2)...if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

(i) ...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien...

Section 212(a)(9) of the Act states, 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.

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, the applicant, through counsel, asserts that the District Director "erred as a matter of law to apply the relevant law to the instant case. The [District Director] erred in finding that there is no extreme hardship for the denial of the I-212 waiver. The [District Director] erred in not properly weighing the relevant equities to the instant case. The [District Director] erred in not drawing the most reasonable material relevant inferences in the instant case." *Brief in Support of Appeal*, dated April 20, 2006. The applicant's daughter, states the applicant "is a good man. [She] know[s] in the past he made some mistakes that would later on in life come back to him. But now he is trying to make up for it by being a good father that he is. [The applicant] changed his whole life around the day [she] was born." *Letter from* [REDACTED] dated April 19, 2006. The applicant's daughter, [REDACTED], states "[her] father has been here in the United States for a while already and most of that time he spen[t] it improving his life for his family. [Her] father has given [her] cloths [sic] to wear, food to eat and a house to live in. Without him [she] wouldn't have so much but only a fraction of [her] things. [Her] mom wouldn't have been able to support three kids alone." *Letter from* [REDACTED] dated April 19, 2006. The applicant's son, [REDACTED], states the applicant takes care of him and "[w]ith out [sic] [his] dad [he] would be in a lot of trouble because [the applicant] keeps [him] out of it...[His] dad is always there for [him] when [he] need[s] him. So if [his] dad gets sent back then [he] would be in a lot of trouble and [he would] need to get a job so [he] can buy the things [he] need[s]...[His] mom would have to pay all the bills and spend more money on [them]. [His] mom doesn't have enough time to take [them] to places because she goes to work and studies a lot for her school." *Letter from* [REDACTED] dated April 20, 2006. The AAO notes that the applicant has been employed as a truck driver since April 1, 1998; however, the applicant worked without authorization during some of that time, and that that is an unfavorable factor. The applicant's wife states the applicant "supports [her] in all [her] endeavors. Any separation from him would cause [her] not only economic hardship, but psychological hardship...[The applicant] makes the difference in discipling [sic] the children, taking them to school, taking them to school activities, and supervising their homework. [She] cannot do it all by [her]self." *Declaration from* [REDACTED] [REDACTED] dated April 20, 2006. Regarding the hardships the applicant's family may face, 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 spouse and children, but it will be just one of the determining factors.

The record of proceedings reveals that on March 28, 1994, an immigration judge ordered the applicant deported from the United States. On April 12, 1994, the applicant was deported from the United States. In June 1994, 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. Additionally, based on the applicant's November 5, 1993, conviction for robbery, which is a crime involving moral turpitude, the applicant is inadmissible under section 212(a)(2)(A)(i)(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 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 *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 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 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 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 family ties to United States citizens, his wife and children, general hardship they may experience, letters of recommendations, payment of taxes, no criminal convictions for over 15 years, and the approval of a petition for alien relative. The AAO notes that the applicant's marriage to his wife occurred after his 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 entries without inspection, his illegal reentry into the United States subsequent to his April 12, 1994 deportation, his criminal record, and periods of unauthorized presence and employment.

The AAO notes that the applicant is still inadmissible under section 212(a)(2)(i)(I) of the Act, for being convicted of a crime involving moral turpitude. However, contrary to the District Director's decision, a waiver is available under section 212(h)(1) of the Act, and the applicant may file a Waiver of Grounds of Excludability (Form I-601), if he decides to do so.

While the applicant's actions cannot be condoned, the AAO finds that given all the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained and the application approved.