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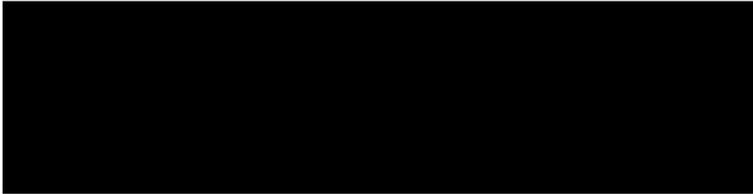
U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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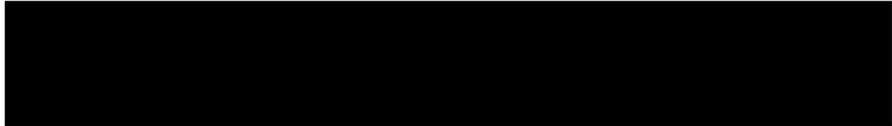


Office: CALIFORNIA SERVICE CENTER
[consolidated therein]

Date: FEB 25 2008

IN RE:

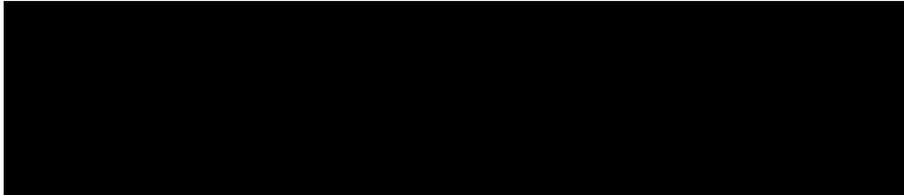
Applicant:



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:



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 establishes that the applicant is a native and citizen of Honduras. On August 9, 1987, the applicant's son, [REDACTED] was born in Honduras. On June 9, 1989, the applicant's son, [REDACTED] was born in Honduras. On September 30, 1992, the applicant's daughter, [REDACTED] was born in Honduras. On February 12, 1995, the applicant entered the United States without inspection. On the same day, an Order to Show Cause (OSC) was issued against the applicant. On May 5, 1995, an immigration judge ordered the applicant deported *in absentia*. On May 30, 1995, the immigration judge reopened the applicant's case *sua sponte*. On September 28, 1995, the applicant's daughter, [REDACTED] was born in California. On October 23, 1995, an immigration judge ordered the applicant deported *in absentia*. On October 26, 1995, a Warrant of Deportation (Form I-205) was issued. The applicant failed to depart the United States. On September 26, 1997, the applicant married [REDACTED], a naturalized United States citizen, in California. On August 19, 1999, the applicant filed an Application for Temporary Protected Status (TPS) (Form I-821), which was approved on May 16, 2000. On April 16, 2001, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On April 30, 2001, the applicant's husband filed another Form I-130 on behalf of the applicant. On May 24, 2001, the applicant's first Form I-130 was approved. On June 27, 2002, the applicant's second Form I-130 was approved. On August 5, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), which was rejected on April 2, 2003. On March 8, 2006, the applicant's children, who were born in Honduras, became lawful permanent residents of the United States. 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)(I). 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 naturalized United States citizen spouse, United States citizen daughter, and three lawful permanent resident children.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for being ordered removed under section 240 or any other provision of law and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated January 31, 2007.

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 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 continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's 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, contends that the Director "abused [her] discretion in finding that the favorable factors did not outweigh the unfavorable." *Form I-290B*, filed February 27, 2007. Counsel asserts that if the Director "had properly applied" *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), and *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), "the waiver should have been granted." *Id.* Counsel states the Director "did not provide a single unfavorable factor. [She] mentioned that the applicant had been ordered deported...[and that] [t]he Court in the case of *Matter of Lee*, supra, emphasized that the legislature intended to give a second chance to someone who has been deported." *Id.* Counsel claims that after the applicant was ordered deported, "[s]he did not immediately leave the United States, remaining until approximately two and half years ago." *Id.*; see also statement from [REDACTED] dated July 11, 2006 ("[The applicant] is currently residing in...Honduras.... In the 2 years that [the applicant] has been out of the United States the entire family has suffered."). The AAO notes that there was no documentation submitted establishing that the applicant voluntarily departed the United States, and even if the applicant did voluntarily depart the United States, it does not negate the fact that the applicant was ordered deported from the United States. Additionally, the hearing notice and the immigration judge's order were sent to the applicant at the last known address provided by the applicant. The applicant's husband states he is "suffer[ing] already without the presence of [the applicant]. [He] feel[s] lonely and sad. Sometimes [he] get[s] very depressed." Statement from [REDACTED] supra. The AAO notes that there are no professional evaluations for the AAO to review to determine how the applicant's husband's mental, emotional, and/or psychological health has been affected by the applicant's immigration status. Additionally, the applicant's husband states the children "are sad and depressed. They are constantly asking [him] when their mother will come to the United States. The children miss the love, support, guidance, and compassion a mother can give them.... This has affected them psychologically and physically and will continue effecting [sic] them the rest of there [sic]

lives.” *Id.* 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 applicant’s husband states he does “not know how [he has] been able to manage the household without [the applicant].” *Id.* The AAO notes that the applicant’s sons, [REDACTED] and [REDACTED], are both adults, and it has not been established that they cannot help with caring for their siblings or help with household expenses. Additionally, the applicant has not established that she could not provide financial assistance to her family from Honduras. The AAO notes that there were periods of time when the applicant was working with authorization; however, those periods of time that she was working without authorization is an unfavorable factor. Additionally, the AAO finds that the applicant’s unauthorized presence in the United States is an unfavorable factor.

The record of proceedings reveals that on October 23, 1995, an immigration judge ordered the applicant deported from the United States. The applicant failed to depart the United States and a Form I-205 was issued on October 26, 1995. 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 principle 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 (7th 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 (7th 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 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 (9th 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 (9th 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 (5th 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 and lawful permanent residents, her husband and children, general hardship they may experience, 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 without inspection, failing to appear at an immigration hearing, her failure to abide by an order of deportation, and her periods of unauthorized presence and unauthorized employment in the United States.

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.