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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JAN 11 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: 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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 El Salvador who, on June 20, 1994, filed a Request for Asylum in the United States (Form I-589) after she entered the United States without inspection. On January 23, 1995, the applicant's Form I-589 was denied and she was placed into immigration proceedings. On November 20, 1996, the immigration judge denied the applicant's applications for asylum, withholding of removal and voluntary departure and ordered her removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On September 17, 1998, the BIA dismissed the applicant's appeal. The applicant filed an appeal and a stay of removal with the Ninth Circuit Court of Appeals (Ninth Circuit). On November 20, 1998, the Ninth Circuit dismissed the applicant's appeal. The applicant's stay of removal was also dismissed. On March 22, 1999, a warrant for the applicant's removal was issued. The applicant failed to depart the United States. On April 3, 1999, the applicant married her spouse, [REDACTED]. On April 20, 2001, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on April 8, 2005. In 2001, the applicant applied for Temporary Protected Status (TPS). The applicant was granted TPS and she has extended her TPS yearly since that date. On March 14, 2006, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(ii) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien having been ordered removed from the United States. 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 lawful permanent resident spouse and two U.S. citizen children.

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated October 5, 2006.

On appeal, the applicant contends she is entitled to a favorable exercise of discretion. *See Form I-290B*, dated October 17, 2006. In support of her contentions, the applicant submits the referenced Form I-290B and a newspaper clipping. The entire record was reviewed 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 Attorney General [now Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The applicant was ordered removed on November 20, 1996 and exhausted her administrative relief on November 20, 1998. The applicant has failed to comply with the order of removal. The AAO finds that the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act and must receive permission to reapply for admission.

The record reflects that [REDACTED] is a native and citizen of El Salvador who became a lawful permanent resident in 1992. The applicant and [REDACTED] have a seven-year old son and a five-year old daughter who are U.S. citizens by birth. The AAO notes that the record does not contain a birth certificate for the applicant's daughter. The applicant and [REDACTED] are in their 30's.

On appeal, the applicant asserts that she should be granted permission to reapply for admission due to her family responsibilities of caring for two children and the separation it would create between her and her husband and children. She asserts that the loss of companionship will cause irreparable damage. She asserts that she has no home to which she can return in El Salvador. She asserts that she is a person of good moral character who has been physically present in the United States for more than ten years and has never been arrested for a felony. She asserts that for humanitarian and economic reasons, as well as the interests of supreme justice, she should be granted permission to reapply for admission. She asserts that to remove her at this time would subject her to gang and mob violence in El Salvador, where there is renewed rebellion. In support of this last assertion the applicant submits a newspaper clipping from the *Los Angeles Times*, which reports an incident in which Salvadoran police officers were attacked during a student demonstration as a result of the growing discontent among members of the Farabundo Marti National Liberation Front (FMLN) party.

The AAO notes that the immigration judge found and the applicant admitted that she had filed a false asylum application for the sole purposes of obtaining employment authorization in 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. *Supra*.

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 7th Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th 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 (9th 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 (5th 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.

The favorable factors in this matter are the applicant's lawful permanent resident spouse, her two U.S. citizen children, and an approved immigrant visa petition. While the AAO notes the *Los Angeles Times* article concerning radical elements in the FMLN party, the information reported does not establish that the applicant would be at risk upon return to El Salvador.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; her filing of a false application for asylum in order to obtain employment authorization; her failure to comply with a removal order; and her unlawful presence and employment in the United States.

The applicant in the instant case has multiple immigration violations. The AAO finds that the applicant's marriage, birth of her children and approval of immigration visa petition benefiting her occurred after the applicant was placed into proceedings and ordered removed. The AAO finds these factors to be "after-acquired equities" and therefore accords them diminished weight. The totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the laws of the United States, and 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.