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U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JAN 18 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) 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 Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Uganda who was admitted into the United States on September 14, 1990 in F-1 student status. The applicant was ordered removed on October 29, 2003. The applicant filed an appeal with the Board of Immigration Appeals (BIA) on November 26, 2003 and the BIA dismissed her appeal on February 14, 2005. The applicant filed a motion to reopen with the BIA and it was denied on July 22, 2005. Therefore, the applicant is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II). The applicant 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 in the United States with her U.S. citizen spouse and children.

The director determined that the unfavorable factors in the applicant's case outweigh the favorable ones and the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) was denied accordingly. *Director's Decision*, at 2, dated February 7, 2007.

On appeal, counsel asserts that the director erred in weighing the favorable and unfavorable factors. *Form I-290B*, received March 9, 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 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.

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.*

The first favorable factor is the applicant's marriage to a U.S. citizen spouse. The second favorable factor is that the applicant is the mother of two U.S. citizens, ages thirteen and six. Counsel asserts that the applicant's two children will suffer extreme hardship if the applicant is removed. *Brief in Support of Appeal*, at 2, undated. The applicant states that she does not wish for her children to grow up without her. *Applicant's Statement*, undated. The immigration judge (IJ) found that the applicant's children may suffer the requisite level of hardship for cancellation of removal, which is exceptional and extremely unusual hardship. *IJ Decision*, at 21, dated October 29, 2003. The record reflects that medical facilities are extremely limited in Uganda and insurgent groups have specifically targeted U.S. citizens in the past. *Department of State, Consular Information Sheet for Uganda*, at 1-2, dated March 16, 2001. Current country conditions information continues to report these same concerns. *Department of State Country Specific Information*, ([http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1051.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1051.html)), dated October 25, 2007

The BIA found that a fifteen-year old child who lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The record reflects that the applicant's thirteen-year old child is completely integrated into the American lifestyle. *Psychological Evaluation*, at 2-3, dated February 11, 2002. Therefore, the applicant's thirteen-year old child would face extreme hardship upon return to Uganda. The record does not include enough evidence to make this finding for the applicant's six-year old child. However, the record indicates that he would experience some hardship upon relocation to Uganda. The record reflects that the applicant's children's father has had very limited involvement in their lives. *IJ Decision*, at 9, *Trial Transcript*, at 200-205, dated March 14, 2003. The record reflects that the applicant's children are very close to the applicant. *Psychological Evaluation*, at 1-8. As the applicant's children have resided for the majority of their lives only with the applicant, the AAO finds by default that they would experience extreme hardship upon separation from the applicant.

In regard to the applicant's hardship if she were removed to Uganda, her brother states that they lost their parents to violence in Uganda and that the applicant does not have any immediate family in Uganda. *Applicant's Brother's Statement*, at 2, dated February 10, 2002. The applicant's brother states that due to the manner in which he and the applicant were orphaned at an early age and the ensuing struggle to maintain themselves, returning to Uganda would not have a positive mental and psychological effect on the applicant. *Id.* The psychological evaluation notes that the applicant suffers from residual effects of post-traumatic stress disorder and if returned to Uganda she would potentially be impaired. *Psychological Evaluation*, at 9-10.

Other favorable factors include the applicant's lack of a criminal record, payment of taxes, volunteer activities, gainful employment and letters of reference.<sup>1</sup> The AAO notes that the applicant's U.S. citizen spouse and second child are after-acquired equities which will be given less weight. 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 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.

The AAO finds that the unfavorable factors in this case include the applicant's false testimony and concealment of facts related to the existence of her children on three separate adjustment of status applications (the IJ found this reflective of lack of good moral character), her employment without authorization, her failure to depart after her order of removal and her unauthorized stay.<sup>2</sup> As evidence of reformation, the AAO notes that the applicant's misrepresentations took place over seven years ago and there is no evidence that she has misrepresented herself since then.

The applicant's actions in this matter cannot be condoned. However, the applicant has 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 established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.

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<sup>1</sup> The record includes three approval notices for employment authorization. However, the record is not clear as to how much of the applicant's employment was authorized.

<sup>2</sup> The director states that the applicant's first spouse filed Form I-130 and it was denied pursuant to section 204(c) of the Act. *Director's Decision*, at 1. Section 204(c) of the Act deals with marriages entered into for the purposes of evading immigration laws. However, the immigration judge specifically found that the applicant did not enter into a "sham" marriage. *IJ Decision*, at 19.