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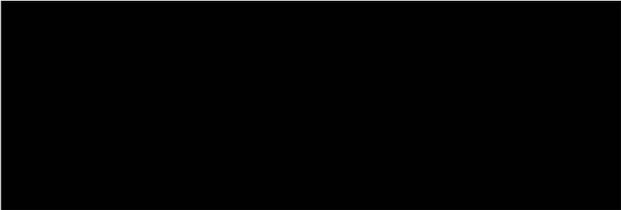
Applicant:



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 District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who initially entered the United States without inspection on February 10, 1989. On February 11, 1989, an Order to Show Cause (OSC) was issued against the applicant. On February 15, 1989, an immigration judge ordered the applicant deported to Honduras. On the same day, a Warrant of Deportation (Form I-205) was issued. On March 2, 1989, the applicant was deported from the United States. On August 1, 1989, the applicant reentered the United States without inspection. On February 3, 1998, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On June 30, 1998, the applicant's Form I-130 was approved. On February 10, 2002, the applicant filed an Application to Extend/Change Nonimmigrant Status (Form I-539). On July 7, 2002, the applicant's status was changed to V1, which was valid from July 5, 2002 to July 4, 2004. On October 30, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). 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). 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 lawful permanent resident wife and United States citizen daughter and stepdaughter.

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), 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 District Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *District Director's Decision*, dated January 24, 2006.

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.

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's decision "is arbitrary and capricious and constitutes a gross abuse of discretion. The decision is completely contrary to the evidence submitted...The applicant's equities far outweigh the negative factors in this case." *Form I-290B*, filed February 21, 2006. Counsel states that "[i]n November of 2004, [the applicant] opened his own trucking business in order to be better able to support his family. His spouse is unable to support herself and her children with [the applicant's] financial assistance and the family would be unable to survive in Honduras...[The applicant's] record in the United States since his 1989 re-entry is untarnished – he has been a hard working family man who has had no encounters whatsoever with the law." *Appeal Brief*, filed March 14, 2006. The applicant's wife states if the applicant is removed from the United States, their "entire family would suffer extreme economic, emotional and mental hardship...[She] cannot survive economically without [the applicant]...[Her] income alone is clearly insufficient to support [her] family...[The applicant] is the economic security blanket for the entire family. [The applicant] has just opened his own business as a delivery truck driver and the business is totally dependent on him...[It] would be impossible for [them] to accompany [the applicant] to Honduras." *Affidavit from* [REDACTED], dated October 17, 2005. Counsel contends that "even though [the applicant's] marriage in March of 1997 may technically be deemed 'after acquired,' [he] submit[s] that all [the applicant's] equities since the filing of the I-130 should *not* be so classified. His marital relationship of over eight years, his paternal relationship with his stepdaughter, the birth of his own daughter in 2005, his opening of a business in 2004, his financial responsibility for and emotional support of his family, his good moral character and complete rehabilitation – were all acquired with the Service's knowledge and implicit and/or explicit consent." *Appeal Brief, supra*. 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 wife and children, but it will be just one of the determining factors.

The record of proceeding reveals that on February 10, 1989, the applicant entered the United States without inspection. On February 15, 1989, a Form I-205 was issued, and on March 2, 1989, the applicant was deported from the United States. On August 1, 1989, 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.

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 (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 a lawful permanent resident and United States citizens, his wife and daughters, general hardship they may experience, approval of a petition for alien relative, steady work record, history of paying taxes, no criminal record, and no other grounds of inadmissibility. The AAO notes that the applicant’s marriage to his wife occurred on March 25, 1997, which was after his 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, his illegal reentry into the United States subsequent to his March 2, 1989 deportation, and periods of unauthorized presence and employment.

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.