

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

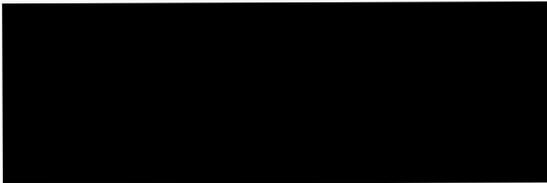
U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

HL4



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 20 2008

IN RE:

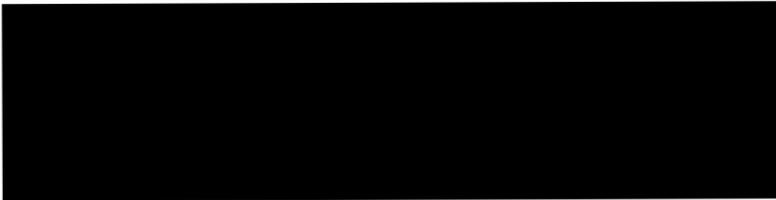
Applicant:



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 sustained.

The record establishes that the applicant is a native and citizen of Mexico who initially entered the United States without inspection in August 1987. On April 2, 1998, the applicant filed an Application for Asylum and for Withholding of Deportation (Form I-589). The applicant's asylum application was referred to an immigration judge. On July 23, 1998, a Notice to Appear (NTA) was issued against the applicant. On November 17, 1998, an immigration judge ordered the applicant removed *in absentia* from the United States. On March 1, 1999, a Warrant of Removal/Deportation (Form I-205) was issued. The applicant failed to depart the United States as ordered. Based on the applicant's order of removal, 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 lawful permanent resident husband and two United States citizen children.

The director determined that the applicant is inadmissible to the United States and denied her Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated February 20, 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.

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.

The applicant states that “[o]n or about February 4, 1998 [she] went to Immigration legal office called ‘Centro De Immigration Hispano’...At that time [she] was nineteen years old and was attending Long Beach City College. [She] had an opportunity to attend the University of California Los Angeles to acquire [her] bachelor’s degree in business. Due to the fact that [she] did not have any legal status in the United States and wanted to attend U.C.L.A., [she] went too [sic] inquired as to how [she] could obtain legal status in the United States. [She] went to ‘Centro de Inmigracion Hispano’, and an individual by the name of Patty filled out [her] paperwork and explained to [her] that since [she] had resided in the United States for more than 10 years [she] would be able to obtain lawful permanent residence by applying for political asylum...After a year had passed [she] called the legal office to inquire as to the status of [her] cases and the phone was disconnected. Since [she] was not able to contact them via phone [she] traveled to their offices, but to [her] dismay found the office closed...The news that [she] had been removed in absentia is devastating to [her].” *Declaration from the applicant*, dated April 26, 2006. The AAO notes that Centro de Inmigracion Hispano is not listed as a recognized organization and is not authorized under 8 C.F.R. §§ 292.1 or 1291.1 to represent any individuals in matters before the Department of Homeland Security and the Immigration Courts.

On appeal, the applicant, through counsel, states that the applicant is “the mother of two American-citizen children and her husband is a Legal Permanent Resident. The Applicant’s children and husband are accustomed to living and working together as a family. It would cause them undue hardship if the Applicant was either removed from this country and their lives, or they too, were forced to leave the United States and live with her in her native country.” *Appeal Brief*, filed March 19, 2007. The applicant states that she has “resided in the United States since [she] was eight years old. [She has] been an excellent citizen of [the United States]; have never been in trouble with the law. [She is] an honest and hardworking individual who believes in the American way of life and ideals. [She has] paid [her] taxes since [she] was eighteen years old.” *Declaration from the applicant, supra*. The applicant claims that “[her] departure from the United States would cause exceptional and [unusual] hardship on [her] family.” *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 husband and children, but it will be just one of the determining factors.

The record of proceedings reveals that on November 17, 1998, an immigration judge ordered the applicant removed from the United States. On March 1, 1999, a Form I-205 was issued against the applicant. The applicant failed to depart the United States as ordered. Based on the applicant’s previous order of removal, 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 (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 (9th Cir. 1980), the 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 a lawful permanent resident of the United States and United States citizens, her husband and children, general hardship they may experience, letters of recommendations, and no criminal record. The AAO notes that the applicant’s marriage to her husband occurred after being ordered removed 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 failure to abide by an order of removal, and periods of unauthorized employment and presence.¹

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.

¹ The AAO notes that the applicant’s initial entry without inspection would usually be an unfavorable factor; however, the applicant was a minor when she entered the United States.