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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

PUBLIC COPY

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 19 2004

IN RE: [redacted]

PETITION: 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 PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Director
Administrative Appeals Office

**DISCUSSION**: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who entered the United States without inspection on or about April 12, 1994. On September 19, 1994, the applicant failed to appear before an immigration judge as required and was order removed from the United States in absentia. On September 2, 1998, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant was convicted as an Imposter under 18 U.S.C. § 1028(a)(4) and sentenced to three years of unsupervised probation. On September 2, 1998, the applicant was removed from the United States and warned, in writing, that he was prohibited from entering, attempting to enter, or being in the United States for a period of 10 years from the date of his departure. The applicant reentered the United States in 1999. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (EAC-97-192-51623). The applicant abandoned a previous Form I-212 filed on March 9, 2000. The applicant 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 U.S. citizen wife.

The director determined that the unfavorable factors in the application outweighed the favorable factors and therefore, the Form I-212 application should be denied. The application was denied accordingly. *See* Decision of the Director, dated November 18, 2002.

On appeal, counsel asserts that the applicant had to return to the United States in order to assist his wife who suffers from a medical condition. Counsel contends that the applicant's spouse will suffer extreme hardship if the applicant is not granted permission to reapply.

In support of these assertions, the record contains copies of federal tax returns for the couple; copies of records regarding the medical condition of the applicant's spouse; a letter from Michael Seligman; two statements of the applicant, undated and dated August 5, 2002, respectively; a copy of the marriage certificate for the couple; copies of photographs of the couple; a copy of the lease agreement for the applicant and his wife; affidavits and letters of support; letters verifying the applicant's clean police record and a letter verifying the applicant's employment, dated August 2, 2002. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> (A) Certain aliens previously removed.-
>
> . . . .
>
> (ii) [A]ny alien . . . who-
>
> (I) Has been ordered removed under section 240 or any other provision of law . . . 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 the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

*Matter of Tin,* 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factor in the application is the applicant's marriage to a U.S. citizen.

The record reflects that the applicant's wife was born in the United States and that she is a U.S. citizen. The record further reflects that the couple married on March 19, 1997, after the applicant was first ordered removed from the United States. The Seventh Circuit Court of Appeals held in *Garcia-Lopez v. INS,* 923 F.2d 72 (1991), that less weight is given to equities acquired after a deportation (removal) order has been entered. Furthermore, 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 (removal) proceedings, and with knowledge that the alien might be deported. *See Ghassan v. INS,* 972 F.2d 631 (5th Cir. 1992). The AAO finds that the applicant's wife should have been aware that the applicant entered the United States in an illegal status and was subsequently ordered removed by an immigration judge making him subject to possible removal proceedings. Hardship to the applicant's wife will thus be given diminished weight.

The unfavorable factors in the application include the applicant's entry into the United States without inspection; the applicant's failure to appear before an immigration judge as ordered; the applicant's failure to comply with the terms of his order of deportation; the applicant's attempt to enter the United States with fraudulent documentation which renders him inadmissible and requires him to seek a Application for Waiver of Ground of Excludability (Form I-601); the applicant's conviction under 18 U.S.C. § 1028(a)(4) and the applicant's reentry into the United States within one year of removal where he was prohibited from reentry for a period of 10 years. Further, since the applicant departed from the United States and subsequently reentered, he did so without an approved Form I-212 and is therefore subject to reinstatement of his prior removal order under section 241(a)(5) of the Act. The applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

**ORDER:** The appeal is dismissed.