PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 18 2004

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.

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, Nebraska 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, on or about November 6, 1997, was found inadmissible under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for having attempted to procure admission into the United States by fraud or willful misrepresentation. On or about November 7, 1997, the applicant was removed from the United States. In December 1998, the applicant reentered the United States without inspection by an immigration officer and without first obtaining permission to reapply for admission to the United States. On November 2, 2002, the applicant was again removed from the United States. On December 15, 1998, the applicant married a naturalized United States citizen. 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 in the United States with her spouse and United States citizen children.

The director determined that the applicant is not eligible to apply for permission to reapply for admission into the United States until she has been outside of the United States for at least 10 years. The director denied the Form I-212 application accordingly. *See* Decision of the Director, dated August 28, 2003.

On appeal, the applicant asserts that she will pay for her crime, but thinks that 10 years is too long to remain apart from her husband and children. *See* Form I-290B, dated September 16, 2003.

To support her assertions, the applicant submits a statement from her spouse, dated September 9, 2003 and a letter from the employer of the applicant's spouse, dated September 22, 2003. The record also contains a copy of the naturalization certificate of the applicant's spouse; copies of the U.S. birth certificates of the applicant's children; a copy and translation of the Mexican birth certificate of the applicant and copies of tax and financial documents for the applicant and her spouse. 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.-
> >
> > > (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 5 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.

. . . .

> (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 factors in the application are the hardship imposed on the applicant's husband and children by the applicant's inadmissibility to the United States and the applicant's lack of a criminal record.

The AAO notes that the applicant and her husband wed after the applicant was first 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 husband should have been aware that the applicant had been previously removed from the United States when he married her during December 1998. Hardship to the applicant's husband is thus given diminished weight.

The unfavorable factors in the application include the fact that the applicant reentered the United States, without inspection, after being removed. The applicant failed to apply for permission to reenter prior to her reentry and therefore, was removed from the United States a second time. Additional unfavorable factors in the application include the applicant's fraudulent misrepresentations to immigration inspectors on November 6, 1997 resulting in inadmissibility to the United States and requiring the applicant to seek an approved Waiver of Grounds of Excludability (Form I-601) in addition to the instant application.

The AAO notes that an applicant's prior residence in the United States is considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. *See Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978). The applicant offers no evidence of reformation or rehabilitation from her disregard for the immigration laws of this country.

The applicant has not established that the favorable factors in her 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 her eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant has failed to establish that she warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.