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

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 20 2007

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it 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 November 29, 1997, was arrested by immigration officers near Yuma, Arizona. The applicant admitted that he was present in the United States without inspection and had resided in the United States since 1979. On November 29, 1997, the applicant was placed into proceedings. On August 24, 1999, the applicant married his spouse [redacted] On August 12, 2003, the immigration judge denied the applicant's application for cancellation of removal and granted him voluntary departure until October 1, 2003. On October 1, 2003, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On December 3, 2004, the BIA dismissed the applicant's appeal and granted him thirty days of voluntary departure. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On January 5, 2006, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) and he 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 remain in the United States and reside with his U.S. citizen spouse and stepchildren.

The director determined that the applicant was inadmissible pursuant to sections 212(a)(6)(A) and 212(a)(9)(A) of the Act, 8 U.S.C. §§ 1182(a)(6)(A) and 1182(A)(9)(A), as an alien present in the United States without inspection or admission and for seeking admission after having been ordered removed. The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated August 7, 2006.

On appeal, the applicant contends that the director erred in denying the application for permission to reapply for admission because he presented sufficient evidence to show that, if the applicant were denied, his family would suffer hardship. *See Form I-290B,* dated August 12, 2006. The Form I-290B indicated that the applicant would submit a separate brief or evidence on appeal within 30 days. More than one year later, the record does not contain a brief and/or additional evidence to support the appeal. The record is, therefore, considered complete.

Section 212(a)(9)(A) of the Act states in pertinent part:

> (A) Certain aliens 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 who 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 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 Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

The record of proceedings indicates that the applicant entered the United States without inspection and, when granted voluntary departure, failed to voluntarily depart the United States. The voluntary departure became a final order of removal with which the applicant failed to comply. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and, therefore, must receive permission to reapply for admission.

The record reflects that [redacted]s a native of Mexico who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1997. The applicant and [redacted]do not have any children together. [redacted] has a 24-year old daughter, a 23-year old son and a 22-year old daughter, from a prior marriage, who are all natives of Mexico who became lawful permanent residents in 1993 and derivative U.S. citizens in 2002. The applicant and [redacted] are in their 40's.

[redacted], in a statement accompanying the Form I-212, indicated that it would be a hardship to her and her children if the applicant is not permitted to become a lawful permanent resident. She states that the applicant is the family's economic and emotional support. She states that the applicant has worked hard for their family and if he is not granted permission to reapply for admission their family will be separated.

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 in the United States unlawfully. *Id.*

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

> [T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] . . . . In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Supra.*

The 7th Circuit Court of Appeals held in *Garcia–Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, 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 proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Munoz v. INS,* 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998) need not be accorded great weight by the district director in considering discretionary weight. Moreover, in *Ghassan v. INS,* 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper. The AAO finds these precedent legal decisions to establish the general principle that "after-acquired equities" are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

The favorable factors in this matter are the applicant's U.S. citizen spouse, his U.S. citizen stepchildren, and a pending immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; his extended unlawful presence and employment in the United States; his non-compliance with an order of voluntary departure; and his non-compliance with an order of removal.

The applicant in the instant case has multiple immigration violations. The AAO finds that the applicant's marriage, the establishment of his parental relationship to his stepchildren and the filing of his immigrant petition occurred after the applicant was placed into proceedings and are "after-acquired equities." Any favorable weight derived from them must, therefore, be accorded diminished weight. In that the totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the laws of the United States and that the favorable factors in the present matter are outweighed by the unfavorable factors, the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.