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

H4

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: DEC 14 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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

[redacted]

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 application for permission to reapply for admission after removal was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of India who entered the United States without inspection on November 24, 1992. The applicant filed an application for asylum on August 30, 1993, it was denied on September 7, 1995 and the applicant was simultaneously issued an Order to Show Cause and Notice of Hearing. The immigration judge (IJ) ordered the applicant deported *in absentia* on June 24, 1997. The applicant filed a motion to reopen his deportation proceeding and it was denied on November 10, 1997. The applicant timely appealed the denial of the motion to reopen with the Board of Immigration Appeals (BIA). The applicant self-deported when he left the United States on January 29, 1999. The BIA affirmed the IJ's denial of the motion to reopen on March 23, 1999.

On or about July 17, 2000, the applicant obtained an immigrant visa based on his marriage to a U.S. citizen (now his ex-spouse), and he was admitted to the United States on August 8, 2000. The applicant then applied for admission as a returning lawful permanent resident on February 13, 2004 and was paroled into the United States for deferred inspection. On March 11, 2004, the applicant's parole was revoked and he was placed into removal proceedings. On May 23, 2005, the IJ found that the applicant was ineligible to receive an immigrant visa on the date of his application due to being previously removed within five years of his visa application, he was not "lawfully" admitted for permanent residence as contemplated under the Act and he is not a lawful permanent resident. The IJ found the applicant inadmissible under sections 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I) and 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II) as an alien not in possession of a valid visa and seeking admission within ten years of a prior removal. 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 in the United States.

The district director determined that the evidence submitted with the application did not warrant a favorable exercise of discretion and the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) was denied accordingly. *District Director's Decision*, dated March 7, 2007.

On appeal, counsel states that the district director abused his discretion in denying the application. *Brief in Support of Appeal*, at 1, undated.

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.

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.

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 principal 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 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 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 (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 favorable equities in the exercise of discretion.

The favorable factors in this case include the applicant's two U.S. children and the lack of a criminal record. The AAO notes that the applicant's children are after-acquired equities and are given diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's misrepresentation of his immigration history in obtaining his immigrant visa, his entrance without inspection, his failure to attend a deportation hearing, his period of unauthorized stay and his unauthorized employment.[1]

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

---

[1] The applicant states that he was unaware of the final deportation order when he applied for his immigrant visa, he was never informed that his departure from the United States constituted a withdrawal of his appeal and his attorney informed him that there would be no adverse legal consequences if he departed the United States to apply for an immigrant visa. *Applicant's Statement*, at 1, dated August 9, 2005. Counsel states that the applicant's misrepresentation was not willful as the applicant completed the application himself and his inaccuracies are attributable to his inexperience with the immigration form. *Brief in Support of Appeal*, at 1. The AAO notes that Form OF 230, Part II, Questions 28(f) and (h) clearly asks if the applicant has failed to attend a deportation hearing and whether he has been ordered removed. The record reflects that the applicant was aware of these answers as he filed an appeal with the BIA based on his *in absentia* deportation order.