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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

H4

JUN 05 2007

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont 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 El Salvador who, on September 11, 1998, was admitted to the United States as a lawful permanent resident. On June 5, 2001, the applicant pled guilty to and was convicted of second-degree assault in violation of Article 27, section 12A of the Maryland Annotated Code. The applicant was sentenced to 364 days in jail, which was suspended in favor of three years of probation. The applicant was also ordered to have no contact with the victim, his stepdaughter, without another adult being present, undergo sex offender counseling, perform 150 hours of alternative community service and register as a sex offender. On July 2, 2003, immigration officers apprehended the applicant. On July 15, 2003, the applicant was placed into immigration proceedings. On September 25, 2003, the immigration judge ordered the applicant removed from the United States pursuant to section 237(a)(2)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1227(a)(2)(E)(i), as an alien who, after admission to the United States, has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment. On December 22, 2003, the applicant was removed from the United States and returned to El Salvador where he has since resided. On April 17, 2004, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on October 1, 2004. On January 6, 2005, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 his naturalized U.S. citizen spouse, two U.S. citizen children and two naturalized U.S. citizen stepdaughters.

The director determined that the applicant was inadmissible pursuant to an additional section of the Act for his second-degree assault and that the unfavorable factors in the applicant's case outweighed the favorable factors. The director denied the Form I-212 accordingly. *See Acting Director's Decision* dated January 12, 2006.

On appeal, counsel contends that the director failed to consider additional favorable factors in denying the applicant's application for permission to reapply for admission. *See Counsel's Brief,* dated February 10, 2006. In support of his contentions, counsel submits the referenced brief, affidavits from the applicant's spouse and stepdaughters, tax and financial documentation for the applicant and a letter of recommendation from the applicant's pastor. The entire record was reviewed in rendering a decision in this case.

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 on a 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 was removed from the United States as alien who, after admission to the United States, has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment in 2003. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and must receive permission to reapply for admission.

The record reflects that, on November 8, 1992, the applicant married his spouse, [redacted] (Ms. [redacted] Ms. [redacted] is a native of El Salvador who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1996. The applicant and Ms. [redacted] have a thirteen-year old daughter and a three-year old son who are both U.S. citizens by birth. Ms. [redacted] has a 22-year old daughter and a 21-year old daughter from a prior relationship who are both natives of El Salvador who became derivative U.S. citizens in 1996.

On appeal, counsel asserts that the director failed to consider that the applicant filed taxes from 1991 until 2003, he and his wife have purchased a home together in the United States and the applicant's removal has caused his wife and children extreme hardship, all favorable factors.

On appeal, Ms [redacted] states that there are three younger children in the applicant's family who are in need of a fatherly figure and that the family has forgiven the applicant and permitted the applicant to live with them after he attended therapy and probation as instructed by the court. She states that, since the applicant's removal, she has broken her back working to keep the family going financially, emotionally and mentally. She states that it would be in her family's best interests for the applicant to return to the United States. She states that the applicant has admitted he has done wrong and has promised to change and become a better person and father. She states that she would never put her children in harm's way and believes it is safe for the applicant to return home.

On appeal, the applicant's 22-year old stepdaughter, the victim of his abuse, states she has forgiven her stepfather. She states that the applicant is the only father figure she has known and she believes that the rest of her family will be safe if the applicant returns home.

On appeal, the applicant's 21-year old stepdaughter states that the applicant's return home would be a great help to her mother.

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 that the above-cited precedent legal decisions establish the general principle that "after-acquired equities" are to be 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 children, his U.S. citizen stepdaughters, his otherwise clear criminal background, his involvement with the local church, and an approved Form I-130. The AAO finds that the birth of the applicant's son and approval of the Form I-130 occurred after the applicant was placed into immigration proceedings. Accordingly, these favorable factors are "after-acquired equities" and the AAO accords them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's removal from the United States as an alien who, after admission to the United States, has been convicted of a crime of domestic

violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment. While the applicant complied with probation for this crime and underwent counseling for sexual offenders, the crime, by its nature, is reprehensible and cannot be condoned. Furthermore, the applicant's conviction is a crime involving moral turpitude which renders him inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). While there is a waiver available under section 212(h) of the Act, 8 U.S.C. § 1182(h), because the applicant's crime is also a crime of violence, an exercise of favorable discretion in granting such a waiver would be subject to the applicant establishing a qualifying relative would suffer exceptional or unusual hardship. *See* 8 C.F.R. § 212.7(d).

As noted above, the applicant in the instant case has been convicted of a particularly reprehensible crime, one that renders him inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. Accordingly, while the AAO has taken note of the favorable factors in this case, it finds them to be outweighed by the unfavorable factors.

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.