U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: SANTA ANA Date: JUL 29 2008
[consolidated therein]
[consolidated therein]

IN RE: Applicant: [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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Santa Ana, California, 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 initially entered the United States without inspection in July 1992. On an unknown date, the applicant departed the United States. On November 26, 1996, the applicant attempted to enter the United States by presenting a Border Crosser Card (Form I-586) in someone else's name. On November 29, 1996, an immigration judge ordered the applicant deported from the United States, and on the same day, the applicant was deported to Mexico. On December 2, 1996, the applicant attempted to enter the United States by presenting a photo-altered Mexican passport and counterfeit Temporary ADIT stamp (Form I-551). On December 5, 1996, an immigration judge ordered the applicant deported from the United States, and on the same day, the applicant was deported to Mexico. On or about December 8, 1996, the applicant reentered the United States without inspection. On October 2, 1998, the applicant's United States citizen wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On April 11, 2001, the applicant's wife filed another Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On August 9, 2002, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) and an Application for Waiver of Grounds of Excludability (Form I-601). On November 17, 2004, the District Director denied the applicant's Form I-601 finding that the applicant failed to establish that extreme hardship would be imposed on the his qualifying relative. On December 17, 2004, the applicant filed an appeal of the District Director's decision to the AAO. On March 12, 2007, the AAO dismissed the applicant's appeal finding that the applicant failed to establish extreme hardship to his spouse. On May 25, 2007, the Field Office Director denied the applicant's Form I-485 based on his grounds of inadmissibility. The applicant is inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), and section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). 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 with his United States citizen wife and daughters.

The Field Office Director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain seek admission into the United States by fraud. The Field Office Director found that based on the AAO's dismissal of the applicant's appeal, the applicant failed to overcome his inadmissibility, and she denied the applicant's Form I-212 accordingly. *Field Office Director's Decision*, dated May 25, 2007. The AAO finds that the applicant is also inadmissible under section 212(a)(9)(A)(ii), 8 U.S.C. § 1182(a)(9)(A)(ii), for being previously removed from the United States.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(i) Arriving Aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under 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.
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> (ii) Other aliens.-Any alien not described in clause (i) who-
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> (I) has been ordered removed under section 240 or any other provision of law, or
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> (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.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, the applicant, through counsel, states that the applicant "will be refiling the adjustment of status with a new fraud waiver, thus he needs the I-212 for these new applications." *Form I-290B*, filed June 21, 2007. The applicant's wife states they have three United States citizen daughters, who "are very close to [the applicant]. If [the applicant] is removed, [their] daughters will miss him very much because they are used to spending a lot of time with him." *Declaration from* [redacted] dated July 18, 2007. The applicant's wife states that she cannot survive without the applicant's help. *Id.* The applicant's wife states she depends on the applicant for financial support. *See statement from* [redacted], dated May 31, 2002. The applicant's wife states that sometimes she is "too sick to take care of [her daughters]." *Declaration from* [redacted] *supra.* The AAO notes that there is no evidence in the record that the applicant's wife suffers from any medical conditions. [redacted] states the applicant's wife suffers from major depression and she recommended weekly psychotherapy. *See letter from* [redacted] *Licensed Clinical Social Worker*, dated

January 4, 2005. There is no further documentation regarding the applicant's spouse's depression or any treatment she may have sought. The AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's family, but it will be just one of the determining factors.

The record of proceeding reveals that the applicant initially entered the United States without inspection in July 1992. On an unknown date, the applicant departed the United States. On November 26, 1996, the applicant attempted to enter the United States by presenting a Border Crosser Card (Form I-586) in someone else's name. On November 29, 1996, an immigration judge ordered the applicant deported from the United States, and on the same day, the applicant was deported to Mexico. On December 2, 1996, the applicant attempted to enter the United States by presenting a photo-altered Mexican passport and counterfeit Temporary ADIT stamp (Form I-551). On December 5, 1996, an immigration judge ordered the applicant deported from the United States, and on the same day, the applicant was deported to Mexico. On or about December 8, 1996, the applicant reentered the United States without inspection. Based on the applicant's previous deportations from the United States, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

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 unlawfully. *Id.*

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 (BIA) denial of an alien's request for discretionary voluntary departure relief. The Seventh Circuit found that the BIA's denial rested on discretionary grounds, and that the BIA 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 BIA 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 BIA'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 hardship to a spouse and for purposes of assessing favorable equities in the exercise of discretion.

The favorable factors in this matter are the applicant's family ties to United States citizens, his wife and children, hardship they are experiencing, no criminal record, and the approval of a petition for alien relative. The AAO notes that the applicant's marriage to his wife occurred on March 26, 1998, which is after his two deportations, and is an after-acquired equity. As an after-acquired equity this factor will be given less weight.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his use of a Border Crosser Card in someone else's name in order to obtain entry into the United States, his use of a photo-altered Mexican passport and counterfeit Temporary ADIT stamp (Form I-551) in order to obtain entry into the United States, his illegal reentries into the United States subsequent to his November 29, 1996 and December 5, 1996 deportations, and periods of unauthorized presence and employment.

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.