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U.S. Citizenship and Immigration Services

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HL

[redacted]

FILE: Office: VERMONT SERVICE CENTER Date: JUN 2 0 2

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, Vermont Service Center, 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 Trinidad and Tobago who entered the United States on December 31, 1993 with a B-2 visitor's visa obtained through misrepresentation of a material fact; remained in the United States beyond her June 30, 1994 expiration date; was placed in removal proceedings on March 24, 1995; received a grant of voluntary departure from the immigration judge on February 7, 1996, which became a final order of removal when she failed to depart the United States; and has continued to reside in the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I). The applicant 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 director determined that the applicant had failed to establish that a favorable exercise of discretion was warranted and denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). *See Director's Decision*, dated February 21, 2007.

On appeal, counsel asserts that the director failed to discuss the recency of the applicant's removal, the health of the applicant's spouse and the hardships that the applicant's spouse and children would experience, and that the positive equities in the applicant's case outweigh the negative factors. *Form I-290B Attachment*, received March 22, 2007.

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

> (A) Certain alien previously removed.-
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> . . . .
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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.

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.

The Regional Commissioner held in *Matter of Lee,* 17 I&N Dec. 275 (Comm. 1978) 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. *Id.*

Pursuant to *Matter of Lee*, the recency of deportation will not be considered as the record does not reflect that the applicant is a person of poor moral character.

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 *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 U.S. citizen spouse, the applicant's payment of taxes, the approved Form I-130 petition benefiting the applicant, letters related to the applicant's good character and

generosity, and the absence of a criminal record for the applicant. Counsel states that the applicant's spouse has high blood pressure, needs constant monitoring and is at risk for a life-debilitating stroke. *Brief in Support of Appeal*, at 3, dated April 17, 2007. Counsel contends that the director failed to address the hardship to the applicant's children, points to the applicant's significant contribution to the family mortgage and asserts that, without her income, the applicant's spouse would be forced to sell their home. *Id.* at 3-4. The applicant's spouse states that he would suffer extreme mental anguish and financial hardship without the applicant. *Applicant's Spouse's Statement*, at 2. The applicant's spouse states that he takes a number of prescribed medicines for his high blood pressure and that without these medications he would develop extreme headaches, aneurysms, and then probably a stroke. *Id.* at 2. The applicant's spouse asserts that without the applicant, he would forget to take his medications due to his busy schedule. *Id.* The applicant's spouse also states that the applicant needs him for her medical conditions (hysterectomy), Trinidad has rampant crime, he has been on the verge of many nervous breakdowns, he has lost sleep thinking about the applicant's removal and he has gained weight. *Id.* at 3.

Although the AAO notes that the record includes copies of several medical prescriptions issued to the applicant's spouse, they are not sufficient to establish the state of his health. The AAO finds no other documentation in the record to support the claims of hardship to the applicant and the applicant's spouse and children. As the record does not sufficiently establish the hardships claimed by counsel and the applicant's spouse, they will be given minimal weight. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO also finds the applicant's marriage to her spouse and the approval of the Form I-130 to be after-acquired equities as they occurred after the applicant was placed in removal proceedings. Accordingly, they will be given diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's unauthorized stay, failure to depart based on her voluntary departure order, failure to depart based on her removal order, inadmissibility based on her misrepresentation while applying for her visitor visa, and unauthorized employment.

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