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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ATLANTA, GEORGIA [consolidated therein] Date: OCT 02 2008

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 District Director, Atlanta, Georgia, 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 entered the United States without inspection on May 1, 1993. On November 16, 1993, an immigration judge ordered the applicant deported *in absentia*. On February 18, 1994, a Warrant of Deportation (Form I-205) was issued against the applicant. On March 8, 1996, the applicant's United States citizen husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On an unknown date, the applicant departed the United States. On May 5, 1996, the applicant was paroled into the United States. On an unknown date, the applicant departed the United States. On May 31, 1996, the applicant was paroled into the United States. On April 8, 1997, the applicant's Form I-130 was approved. On an unknown date, the applicant departed the United States. On May 11, 1997, the applicant was paroled into the United States. On an unknown date, the applicant departed the United States. On March 30, 1998, the applicant was paroled into the United States. On September 16, 1998, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On November 17, 2005, the applicant's Forms I-212 and I-485 were denied. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 with her United States citizen husband and children.

The District Director determined that the applicant is inadmissible to the United States and denied the applicant's Form I-212 accordingly. *District Director's Decision*, dated November 17, 2005.

Section 212(a)(9)of the Act states:

> (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.

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, asserts that the District Director "incorrectly states in its denial notice the date on which the Applicant was ordered deported." *Form I-290B*, filed December 19, 2005. The AAO notes that counsel is correct that the District Director incorrectly stated that the applicant was ordered deported on April 19, 1996. The applicant was ordered deported *in absentia* by an immigration judge on November 16, 1993. Counsel contends that the District Director "incorrectly states that the Applicant admitted to have used false documentation when she sought admission into the United States. As the records indicate, the Applicant admitted to an immigration officer in 1993 that she was never inspected when [she] entered the U.S. on May 1993; she never presented or admitted to have presented any false documentation." *Id.* The AAO notes that the record does not establish that the applicant admitted to using false documentation to enter the United States; however, the AAO finds that the applicant willfully misrepresented herself as [redacted] when she was apprehended by immigration officers on August 3, 1993, and she was ordered deported under that name. Counsel contends that the "Service also mistakenly states that on June 21, 2004 the Applicant indicated on her sworn testimony that after being released into Mexico, she made an unlawful entry only days after being released." *Id.* The AAO notes that there is no evidence in the record that the applicant gave any testimony in 2004 or was physically deported or removed to Mexico. Additionally, the AAO notes that the applicant has been paroled into the United States on four (4) separate occasions. Counsel states that the applicant "has been in the U.S. for almost thirteen years." *Appeal Brief*, page 6, filed February 10, 2006. The AAO notes that the majority of the time that the applicant has been present in the United States is without authorization and that is an unfavorable factor. Counsel states that the applicant is a "person of good moral character; she has no criminal record,...she and her husband have been paying taxes since they got married in 1996,...and she is extremely involved with her community." *Id.* at 6-7. Counsel states that the applicant's husband and children would suffer extreme hardship if the applicant is removed from the United States. *Id.* at 8. 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 husband and children, but it will be just one of the determining factors.

The record of proceeding reveals that on November 16, 1993, an immigration judge ordered the applicant deported from the United States. The applicant failed to depart the United States as ordered, and on February 18, 1994, a Form I-205 was issued. Based on the applicant's order of deportation from the United States, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) 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 (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 (OSC) 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 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 her United States citizen husband and children, general hardship they may experience, letters of recommendation, the lack of a criminal record besides her immigration violations, and the approval of a visa petition filed by the applicant's husband on her behalf. The AAO notes that the applicant's marriage to her husband occurred on December 6, 1995, which was after the applicant was ordered deported from the United States, 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, the willful misrepresentation of her identity when she was apprehended by immigration officers, her failure to appear for her removal hearing, her failure to abide by an immigration judge's order, and her periods of unauthorized presence in the United States.

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 she 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.