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

H4

FILE: [redacted] Office: MILWAUKEE, WI Date: OCT 27 2008

RELATES)

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 Field Office Director, California 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 Ecuador who, on April 1, 1986, was placed into immigration proceedings under the name "[redacted]" after she entered the United States without inspection. On April 21, 1986, the applicant stipulated to voluntary departure until April 30, 1986, or July 5, 1986, if she was released from custody, with an alternative order of removal to Ecuador. The applicant was unable to meet the bond required for her release and she was unable to purchase a return ticket to Ecuador in order to depart the United States by April 30, 1986, thereby changing the grant of voluntary departure to a final order of removal. On May 1, 1986, a warrant for the applicant's removal was issued. On May 7, 1986, the applicant was removed from the United States and was returned to Ecuador. On June 17, 2001, the applicant married her then lawful permanent resident spouse, [redacted]. On November 13, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed on her behalf by [redacted]. The applicant appeared at Citizenship and Immigration Services' (CIS) Milwaukee, Wisconsin Field Office. The applicant testified that she had reentered the United States without lawful admission or parole and without permission to reapply for admission on July 7, 1989. On September 20, 2007, the applicant filed the Form I-212. On January 8, 2008, the Form I-130 was approved. On the same day, the Form I-485 was denied. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 U.S. citizen spouse and children.

The field office director determined that the applicant was inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision* dated January 8, 2008.

On appeal, counsel contends that the field office director erroneously denied the applicant's Form I-212. Counsel contends that the evidence shows that the applicant's spouse would suffer hardship if the applicant were to be removed from the United States. *See Form I-212,* dated February 7, 2008. The Form I-290B indicates that counsel will submit a separate brief or evidence on appeal within 30 days. On September 24, 2008, the AAO informed counsel that he had five days in which to submit additional documentation to support the appeal. As of the date of this decision, the AAO has not received a response from counsel. The record is, therefore, considered complete.

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

> (A) Certain aliens previously removed.-
>
> > (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five 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.

(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 Secretary has consented to the alien's reapplying for admission.

The record reflects that is a native of Honduras who became a lawful permanent resident in 1997 and a naturalized U.S. citizen in 2002. The applicant and [redacted] have a seven-year old daughter and a three-year old daughter who are both U.S. citizens by birth. The applicant and [redacted] are in their 40's.

The AAO notes that the field office director incorrectly stated that the applicant provided a false name and date of birth to immigration officers at the time she was apprehended and placed into immigration proceedings. The record reflects that the applicant's maiden name is '[redacted]' and that her removal records are under the name [redacted]

The AAO now turns to a consideration of positive and adverse factors in the present case.

Tax records indicate that the applicant paid federal taxes in 2005. While the applicant stated in the Biographical Information Sheet (Form G-325A) submitted with the Form I-130 filed by her spouse that she was employed in the United States since July 1996, the applicant was issued employment authorization only from July 23, 1998, until July 22, 1999, and April 17, 2003, until November 13, 2006.

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. *Id.*

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 these precedent legal decisions to establish the general principle that "after-acquired equities" are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

As established by the record, the favorable factors in this matter are the applicant's U.S. citizen spouse, her U.S. citizen daughters, her payment of federal taxes in 2005, and an approved immigrant visa petition. The AAO notes that the applicant's marriage, the birth of her daughters and the filing of the immigrant visa petition benefiting her occurred after the applicant was placed into immigration proceedings. These factors are "after-acquired equities" and the AAO will accord them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; her illegal reentry after having been removed from the United States; her unlawful presence in the United States since her reentry and prior to filing the Form I-485; and her unauthorized employment in the United States, except for the period between July 23, 1998, until July 22, 1999, and April 17, 2003, until November 13, 2006.

The applicant in the instant case has multiple immigration violations. The totality of the evidence demonstrates that the favorable factors in the present matter are 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 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.