U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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PUBLIC COPY

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: NEW YORK ,NY Date: DEC 27 2013

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: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, 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 Guatemala who, on January 10, 1994, filed a Request for Asylum in the United States (Form I-589), indicating that she entered the United States without inspection on June 15, 1992. On April 11, 1996, the applicant was placed into immigration proceedings for having entered the United States without inspection. On September 4, 1996, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States.

On August 20, 2009, the applicant filed the Form I-212, indicating that she resided in the United States. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (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 and legalize her immigration status.

The district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision,* dated May 26, 2010.

On appeal, the applicant states that she is filing an appeal because she considers the United States her home, she is a person of good moral character, she has never committed a crime and she has resided in the United States for 18 years. *See Form I-290B,* dated June 23, 2010. In support of her contentions, the applicant submits the referenced Form I-290B, recommendation letters and identity documents. The entire record was reviewed in rendering a decision in this case.

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.
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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
> > >
> > > (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 of an 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 the applicant does not appear to have any immediate family members who are lawful permanent residents or U.S. citizens. While the applicant contends that she has U.S. citizen grandchildren and she provides U.S. Birth Certificates for six U.S. citizen children, the record does not establish that these children are indeed the applicant's grandchildren. The AAO notes that, even if the applicant could provide evidence that these children are her U.S. citizen grandchildren, only an applicant's immediate family members such as parents, a spouse or siblings may be considered equities because these individuals may petition on behalf of an applicant; however, the applicant's grandchildren would be considered positive factors in relation to hardship to the applicant's family. The applicant is in her 40's.

On appeal, the applicant states that she is filing an appeal because she considers the United States her home, she is a person of good moral character, she has never committed a crime and she has resided in the United States for 18 years. The applicant states that she applied for asylum when she entered the United States because she was running from the chaos and threats in her country. She states that she was scared and decided to come to the United States for a peaceful future. She states that Guatemala is a beautiful country but she believes that dangers still exist.

While the applicant contends that she has never committed a crime, the record does not contain clearance letters and the applicant has not been fingerprinted in connection with any applications or petitions since she was ordered removed from the United States.

A letter from [redacted] of the [redacted] dated June 16, 2010, indicates that he came to the Church in 1997 and has known the applicant to be a congregant in good standing since August 1997. He states that the applicant has contributed in many ways to the growth and development of the Church and is a well respected and outstanding member of the Church and community. He states that he has seen the applicant grow spiritually and that she is well liked and very much part of the Church. He states that he has witnessed the applicant's outstanding job as a mother and as an essential part of the growth and blessing of the flock. He states that the applicant has a special place in the Church for her ongoing efforts to participate and as part of the growing congregation.

Letters from friends state that the applicant is a good, nice, responsible, trustful, caring and god-fearing woman. They state that the applicant's top priority is her family and that she provides for her family's financial needs. They state that the applicant has never discouraged anyone. They state that the applicant has a good reputation and is known for helping others when it's within her ability.

The record reflects that the applicant is employed in the United States. The record reflects that the applicant was issued employment authorization from March 19, 1994 through March 19, 1995 and July 16, 1999 through July 15, 2000. The AAO notes that the applicant was not entitled to employment authorization from July 16, 1999 through July 15, 2000 as an applicant for asylum because she had been ordered removed.

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 a discretionary determination. 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 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.

As established by the record, the favorable factors in this matter are the general hardship to the applicant and her family if she were denied admission to the United States. Moreover, the record fails to establish that the applicant is the beneficiary of any immigrant or nonimmigrant visa petition that would currently offer her a means of acquiring lawful residence in the United States.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States; her failure to attend her immigration hearing; her failure to comply with a removal order; her unauthorized and unlawful presence in the United States; and her unauthorized employment in the United States, except for periods of employment authorization.

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.