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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: FEB 24 2011

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:

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 Field Office Director, Los Angeles, California, 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 Mexico who, on April 23, 1998, appeared at the San Ysidro, California port of entry. The applicant presented an I-586 border crossing card bearing the name '[redacted]' The applicant was placed into secondary inspection. The applicant admitted that she was not the true owner of the document and that she did not have valid documentation to enter the United States. The applicant failed to provide her true identity to immigration officers. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to obtain admission to the United States by fraud and for being an immigrant without valid documentation. On April 24, 1998, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) under the name '[redacted]'

On April 28, 1998, the applicant appeared at the San Ysidro, California port of entry. The applicant presented an I-586 border crossing card bearing the name '[redacted]' The applicant was placed into secondary inspection. The applicant admitted that she was not the true owner of the document and that she did not have valid documentation to enter the United States. The applicant admitted that she had been previously removed from the United States and that she knew she was not eligible for readmission. At first, the applicant claimed that she was '[redacted]' Even after admitting that she was not [redacted] the applicant failed to provide her true identity to immigration officers. On April 28, 1998, the applicant was placed into immigration proceedings under the name '[redacted]' The applicant was returned to Mexico on the same day to await trial. On July 9, 1998, the immigration judge ordered the applicant removed *in absentia* under the name "[redacted]"

On April 24, 2001, the applicant married her lawful permanent resident spouse in Wilmington, California. On April 7, 2005, 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 her lawful permanent resident spouse. On October 17, 2006, the Form I-130 was approved. During an interview in regard to the Form I-485, the applicant testified that she entered the United States without inspection on January 1, 2001. On October 27, 2007, the Form I-485 was denied. On July 28, 2007, the applicant filed a second Form I-485. On the same day, the applicant filed a Form I-212, indicating that she continued to reside in the United States. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i) for a period of twenty years. 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 now naturalized U.S. citizen spouse and six U.S. citizen children.

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 May 13, 2009.

On appeal, counsel contends that the applicant warrants a favorable exercise of discretion. *See Counsel's Brief,* dated July 8, 2009. In support of his contentions, counsel submits only the referenced brief. 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.-
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> (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.
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> (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. [emphasis added]
>
> . . . .
>
> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
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> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
>
> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters

> or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) Exception.
>
> Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.
>
> (iii) Waiver
>
> The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—
>
> (I) the alien's battering or subjection to extreme cruelty; and
>
> (II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

On appeal, counsel contends that the evidence establishes that the applicant has met the extreme hardship standard. The AAO notes, however, that counsel refers to the incorrect standard for permission to reapply for admission. Permission to reapply for admission requires an applicant to establish that he or she warrants a favorable exercise of discretion. Hardship to the applicant and her family members is just one factor to be weighed in the adjudication of the application.

Counsel contends that: the applicant warrants a favorable decision in this matter; the applicant, if forced to leave her husband in the United States, would cause her husband the hardship of obligating him to provide her with much needed support while struggling to ensure financial security for himself and his children; in the meantime, the applicant's children will grow up without her presence, and will be deprived of her love, affection and emotional support; it is clear that the applicant herself would be unable to find a job to support her family due to her educational level and lack of employment history; the applicant's spouse would be unable to secure employment in Mexico that could enable him to ensure his family's financial stability or even survival; the applicant's spouse has virtually non-existent chances of obtaining a similarly paying job due to the current economic conditions in Mexico; alternatively, it would be practically impossible for the applicant's spouse to maintain two households since his income is not sufficient to provide for all his family members who depend on his provision of support; the denial of the applicant's application would be an extremely unjust result that goes directly against public policy of assuring family unity; it is virtually impossible for the applicant's spouse to imagine his life without his wife and partner and that family will be undeniably disrupted and utterly devastated; the applicant has strong family ties in the United States; and the field office director failed to adequately consider the existence of the applicant's U.S.-born children.

The record reflects that the applicant's spouse is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 2008. The applicant has a 23-year-old daughter, a 22-year-old daughter and a 20-year-old son from prior relationships who are all U.S. citizens by birth. The applicant and her spouse have an 18-year-old daughter, a 14-year-old daughter and a 9-year-old son who are all U.S. citizens by birth.

Letters from the applicant and her spouse indicate that the applicant is a good mother, a person of good moral character and that she should be permitted to remain in the United States. A letter from the applicant's oldest child indicates that the applicant encouraged her child to graduate from High School and has continued to support her child by providing assistance in the home and with child rearing.

Certificates in the record reflect that the applicant has been involved in her children's education. Certificates and educational documentation reflect that the applicant's children have been enrolled and participated in school activities and education. An Individual Educational Plan (IEP) indicates that the applicant's youngest daughter met all of her objectives for the 2007 year and would continue to receive support.

Medical records indicate that the applicant experienced chest and back pain in October 2006.

A criminal history printout reflects that the applicant does not have a criminal record in California.

The record reflects that the applicant filed joint taxes in 2006, has resided in the United States since at least September 1992, and has not been employed in the United States.

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 applicant's naturalized U.S. citizen spouse, her six U.S. citizen children, the general hardship to the applicant and her family if she were denied admission to the United States, the absence of a criminal record and the approved immigrant visa petition filed on her behalf. The AAO notes that the applicant's marriage, birth of her youngest child and the filing of the immigrant visa petition benefiting her occurred after the applicant was placed into immigration proceedings. They are, therefore, "after-acquired equities," to which the AAO accords diminished weight.

The unfavorable factors in this case include the applicant's original unlawful entry into the United States; her attempt to enter the United States by fraud; her inadmissibility under section 212(a)(6)(C)(i) of the Act; her second attempt to enter the United States by fraud; her failure to appear at an immigration hearing; her unlawful reentry into the United States after having been removed; her inadmissibility under section 212(a)(9)(C) of the Act; and her unlawful presence in the United States.

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.

Beyond the decision of the field office director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(9)(C)(i)(II) of the Act and does not qualify for a waiver or the

exception under section 212(a)(9)(C)(ii) and (iii) of the Act. Therefore, the applicant is statutorily ineligible to apply for permission to reapply for admission into the United States.[1]

ORDER: The appeal is dismissed.

[1] The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).