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

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U.S. Citizenship and Immigration Services

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[redacted]

Date: FEB 2 8 2012 Office: LOS ANGELES, CA FILE: [redacted]

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)(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,

Michael Rhew

for 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 record reflects that the applicant is a native and citizen of Belize. On February 20, 1986, an immigration judge ordered that the applicant be deported from the United States pursuant to section 241(a)(2) of the Act for having entered the United States without inspection. The applicant stated in her sworn statement that she reentered the United States without inspection on October 2, 1986. The applicant states that she has not left the United States since her last entry. On April 5, 2010, the applicant's U.S. citizen daughter filed a Form I-130 on the applicant's behalf, which was approved on July 27, 2010. On April 5, 2010, the applicant filed the Form I-212, which was denied on April 14, 2011.

The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant seeks permission to reapply for admission into the United States pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 212(a)(9)(A)(iii), in order to reside in the United States.

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 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.

On appeal, counsel contends that the applicant has four U.S. citizen children who are now adults. Counsel states that the applicant married a U.S. citizen on April 19, 2010, and that the applicant and her two youngest daughters and son live with the applicant's husband. Counsel declares that the director failed to consider the applicant's good moral character, length of residence in the United States, her son and daughters in the United States, and her marriage to a supportive husband, particularly after years in a bad relationship and marriage. Counsel conveys that the applicant's children's father was incarcerated and the applicant was her children's sole provider. Counsel maintains that the applicant knows nothing of Belize. Additionally, counsel asserts that other than violation of U.S. immigration laws, the applicant has not committed other crimes. Counsel cites *Matter of T*, 1 I&N Dec. 158 (BIA 1941), *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), and other Board of Immigration Appeal (Board) decisions in support of the assertion that a deportation order is not, standing alone, a sufficient ground for finding lack of good moral character.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed as factors to be considered in the adjudication of a Form I-212:

> The basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitations, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

14 I&N Dec. 371 at 373-374.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while unlawfully present in the United States, and thus had obtained an advantage over aliens who seek visa issuance abroad or abide by the terms of their admission while in the United States. The Regional Commissioner concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter to work in the United States illegally. 14 I&N Dec. 374.

In *Matter of Lee*, the Commissioner held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. 17 I&N Dec. 275 at 277-278. *Matter of 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.

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. In *Ghassan v. INS,* 972 F.2d 631, 634-635 (5th Cir. 1992), the Fifth Circuit 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. In *Garcia–Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991), the Seventh Circuit held 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. The Ninth Circuit 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.

The unfavorable factors in the instant matter are the applicant's entry in the United States without inspection, her deportation, her reentry after deportation, her unlawful presence in the United States, and any unauthorized employment.

The asserted favorable factors in the case are the applicant's having lived in the United States for 25 years, her close relationship with her husband and son and daughters, and raising her children without the support of their father.

As previously stated, "after-acquired equities" are accorded less weight in assessing favorable equities in a discretionary determination. Thus, less weight is to be accorded to the applicant and her husband's marriage as they both married with the knowledge that she is illegally in the United States. The record shows that the applicant's children are now 19, 21, 22, and 24 years old, and, in view of their age, are not likely to have the same emotional and financial dependence on their mother that they had as children. While we acknowledge that the applicant will experience the emotional hardship of separation from her son and daughters in the United States, the applicant will not be alone in Belize as the record indicates her oldest son lives there. Additionally, the applicant's equity of working in the United States was primarily obtained while she was unlawfully present here, as was her length of residence in the United States, and inasmuch is accorded less weight as an equitable factor.

In applying the principles set forth in this discussion and weighing all factors present, we find that a favorable exercise of discretion is not warranted in this case. 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. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.