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

(b)(6)

[redacted]

Date: JAN 02 2013 Office: VIENNA, AUSTRIA 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.

Thank you,

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Vienna, Austria, 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 sustained.

The record reflects that the applicant is a native and citizen of Albania who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II). 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), due to having been previously removed. 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 mother.

The Field Office Director denied the Form I-212 as a matter of discretion after determining the applicant had failed to establish that a qualifying relative would experience extreme hardship and denying the applicant's Form I-601. *See Field Office Director's Decision,* dated December 20, 2010.

On appeal, counsel for the applicant asserts the Field Office Director's denial was an abuse of discretion, that the record contains sufficient documentation to establish a qualifying relative will experience extreme hardship and that there are sufficient favorable factors to approve the applicant's Form I-212.

The record contains, but is not limited to, the following documents: briefs and statements from counsel for the applicant; statements from the applicant's spouse; a statement from the applicant; copies of tax returns and other business documents related to the applicant's spouse's construction company; significant amounts of country conditions materials on Albania; statements made by [redacted] M.D., pertaining to the mental health of the applicant's spouse; a statement by [redacted] MSW, MPH, pertaining to the mental health of the applicant's spouse, dated April 28th, 2010; and copies of school records of the applicant's spouse's brother.

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-

(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 entered the United States on March 14, 2002 using a fraudulent Italian passport and identity. The applicant's mother subsequently filed an asylum application with the applicant listed as a derivative minor. The asylum application was denied, as well as subsequent appeals, and the applicant entered into removal proceedings in December 2007. She was removed on June 12, 2008. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The record reflects that that the applicant entered the United States as a minor. Counsel has asserted that the applicant's spouse will experience a range of hardship impacts due to the applicant's inadmissibility and the applicant has provided documentation to support these assertions.

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.

Counsel asserts on appeal that the applicant's spouse will experience extreme hardship due to the applicant's inadmissibility, and notes the presence of numerous family members in the United States. *Brief in Support of Appeal*, received February 17, 2011. Counsel specifically asserts that the favorable factors include the presence of the applicant's spouse and the hardship he would experience, the lack of any criminal record and the presence of an approved Form I-130, Petition for Alien Relative.

The record contains statements from the applicant's spouse attesting to her moral character and value she plays in the life of his family. The record also contains an approved Form I-130, Petition for Alien Relative. The AAO notes that the applicant resided in the United States for a period of seven years, all of her adult life, and is the only child of her mother who now resides in the United States.

The AAO has found the record to support that a qualifying relative will experience extreme hardship both upon relocation and separation and has sustained the applicant's Form I-601. This warrants favorable consideration in the overall determination of whether to exercise favorable discretion.

The unfavorable factors in this case include the applicant's misrepresentation, unlawful presence and unauthorized employment. However, mitigating these negative factors is the applicant's subsequent compliance with the removal hearing process, including compliance with a U.S. Immigration and Customs Enforcement (ICE) Order of Supervision and ultimate removal. Additional favorable factors in this case include the lack of any criminal record while residing in the United States, the fact that the applicant's mother is a now a U.S. citizen, and that the applicant is her only daughter.

When these factors are weighed, the AAO finds that the favorable factors outweigh the negative factors in this case, and will therefore exercise favorable discretion.

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 established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.