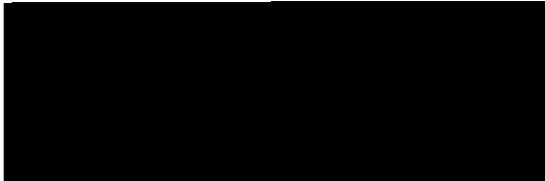




U.S. Citizenship
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Services

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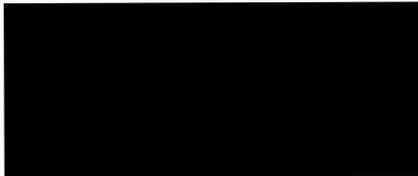
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IN RE:

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:



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 Director, Vermont 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 Mexico who, in 1991, entered the United States without inspection. On March 6, 1995, the applicant was placed in immigration proceedings for entering the United States without inspection. On June 15, 1995, the immigration judge granted the applicant voluntary departure until December 15, 1995. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On August 31, 1995, the applicant married his spouse, [REDACTED]. On November 20, 1995, the applicant's spouse filed a Petition for Alien Relative (Form I-130), which was approved on August 15, 1996. On April 29, 1996, the applicant's U.S. citizen son was born. On September 30, 1996, the applicant filed a motion to reopen before the immigration judge, which was denied on February 21, 1997. Despite being issued a notice to report for removal, the applicant failed to present himself for deportation or to depart the United States. On October 22, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. In October 2003, immigration officers apprehended the applicant. On October 22, 2003, the applicant filed another motion to reopen with the immigration judge, which was denied. On December 13, 2003, the applicant was removed from the United States and returned to Mexico where he has since resided. On April 26, 2004, the applicant filed the Form I-212. 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). The applicant 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 return to the United States and reside with his U.S. citizen spouse and children.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *See Director's Decision* dated May 11, 2005.

On appeal, counsel contends that the director failed to consider the extreme hardship to his wife and children as a favorable factor and included facts as negative factors, when they were neutral factors, in deciding whether the applicant warranted a favorable exercise of discretion. *See Applicant's Brief*, dated May 31, 2005. In support of his contentions, counsel submitted only the above-referenced brief. The entire record was reviewed in rendering a decision in this case.

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

(A) Certain aliens previously removed.-

....

(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 Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

The record of proceedings indicates that the applicant entered the United States without inspection and, when granted voluntary departure, failed to voluntarily depart the United States. The voluntary departure became a final order of removal with which the applicant failed to comply. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and, therefore, must receive permission to reapply for admission.

The record reflects that [REDACTED] is a native of Ecuador who became a lawful permanent resident in 1984 and a naturalized U.S. citizen in 1996. [REDACTED] has a [REDACTED] son from a previous relationship who is a U.S. citizen by birth. [REDACTED] father, mother, sister and brother-in-law reside with her and her children. [REDACTED] has two other adult siblings who reside in the United States. The applicant's mother resides in Mexico and one of his siblings resides in the United States. The applicant also testified that he had utilized a fraudulent lawful permanent resident card and social security card in order to obtain employment in the United States.

On appeal, counsel contends that the applicant's departure from the United States has caused [REDACTED] and her children extreme hardship, both financially and emotionally. In her affidavit [REDACTED] states that the resulting financial obligations have left her incapable of supporting her family. The applicant's spouse also states that separation from the applicant has caused her and her children extreme emotional hardship and her child has developed asthma. A psychological report indicates that [REDACTED] has been diagnosed with panic disorder and adjustment disorder with mixed anxiety and depressed mood. The record does not contain evidence that [REDACTED] or her children have received psychological treatment or evaluation other than during the appointment used to write the psychological report and it does not indicate whether they require continued treatment. Therefore, the psychological report can be given little weight. While it is unfortunate that [REDACTED] may be unable to maintain the family's current standard of living and may have to lower the family's standard of living, the record does not contain any evidence to suggest that she would be unable to financially support her family without the financial support or assistance of the applicant. There is no evidence in the record to suggest that the applicant's spouse or children suffer from a mental or physical illness that would result in hardship beyond that commonly suffered by aliens and families upon deportation or that she is unable to support her family financially.

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 [REDACTED] *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 [REDACTED] *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 that the above-cited precedent 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.

The favorable factors in this matter are the applicant's U.S. citizen spouse, child and stepchild, an approved immigrant petition for alien relative, a lack of criminal history and the general hardship suffered by the applicant's family.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States, extended unauthorized residence and employment in the United States, use of fraudulent immigration documents to obtain employment in the United States, failure to depart the United States under an order of voluntary departure and non-compliance with an order of deportation.

The applicant in the instant case has multiple immigration violations. Moreover, the AAO finds that the applicant's marriage, birth of his U.S. citizen child, becoming stepfather to a U.S. citizen child and approved

immigrant petition occurred after the applicant was placed into immigration proceedings. The AAO finds that these factors are “after-acquired equities” and that any favorable weight derived from the applicant’s marriage, the birth of his U.S. citizen child and immigrant petition is accorded diminished weight. The totality of the evidence demonstrates that the applicant has exhibited a clear disregard for the laws of the United States, and 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 that he 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.