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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 27 2007

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 Guatemala who, on August 12, 1994, filed a Request for Asylum in the United States (Form I-589) after he entered the United States without inspection. On April 18, 1995, the applicant's Form I-589 was referred to the immigration judge and he was placed into immigration proceedings. On June 5, 1996, the applicant withdrew his applications for asylum and withholding of removal and the immigration judge granted him voluntary departure until April 5, 1997. 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 7, 1997, a warrant for the applicant's removal was issued. On April 19, 2002, the applicant married his spouse, [REDACTED]. On March 3, 2005, Ms. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on April 27, 2005. On March 10, 2006, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(ii) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien having been ordered removed from the United States. He 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 his U.S. citizen spouse and U.S. citizen daughters.

The director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without inspection for which there is no waiver available. The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated September 27, 2006.

On appeal, the applicant contends that he is a person of good moral character who needs to work in the United States in order to support his U.S. citizen family. *See Form I-290B*, dated October 21, 2006. In support of his contentions, the applicant submits the referenced Form I-290B, a copy of the approval notice of the Form I-130 and copies of family identification 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.
- (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 on a 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 of Homeland Security] has consented to the alien's reapplying for admission.

The applicant failed to comply with an order of voluntary departure that became a final order of removal. The applicant has also failed to comply with the order of removal. The AAO finds that the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act and must receive permission to reapply for admission.

The record reflects that Ms. [REDACTED] is a U.S. citizen by birth. The applicant and Ms. [REDACTED] have a five-year old daughter and a two-year old daughter who are U.S. citizens by birth. The applicant is in his 30's and Ms. [REDACTED] is in her 20's.

On appeal, the applicant states that the media has recently reported on new laws referring to removal cases and would like to inquire as to whether he qualifies under these new laws. The AAO notes that there have been no new laws or regulations implemented since the applicant filed his Form I-212.

On appeal, the applicant states that he has resided in the United States since 1992. He states that he entered the United States in order to flee the internal political turmoil occurring in Guatemala at the time. He states that he was misadvised to seek asylum in the United States and the judge did not give credence to his claims that guerillas had persecuted him in Guatemala. He states that he is requesting his police record from Sacramento and that, other than an immigration violation, he is a person of good moral character and an evangelical who needs to work in the United States to support his family. He states that he has two U.S. children who would suffer tremendously if they were to be separated from him. He states that he is not eligible to adjust his status in the United States.

On appeal, the applicant asserts that he paid for his immigration case to be appealed but that apparently an appeal was never filed. The applicant does not provide evidence to establish that he sought to file an appeal of his immigration case and the record reflects that the applicant waived his right to an appeal at the time the immigration judge entered the decision in the applicant's case.

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. *Supra*.

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 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 these precedent legal decisions to 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, the applicant's two U.S. citizen daughters, the general hardship his family would suffer and an approved immigrant petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; his failure to comply with an order of voluntary departure; his failure to comply with a removal order; and his extended unlawful residence and unauthorized employment in the United States.

The applicant in the instant case has multiple immigration violations. While the AAO notes the applicant's marriage, birth of his daughters and the approval of the immigrant visa petition benefiting the applicant, all of these events occurred after the applicant was placed into proceedings and ordered removed. Accordingly, these factors are "after-acquired equities" and the AAO will accord them 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.

The AAO notes that the director found the applicant to be inadmissible pursuant to section 212(a)(6)(A)(i) of the Act, a ground of inadmissibility for which there is no waiver available, which renders him ineligible to adjust his status in the United States.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish 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.