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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: SAN ANTONIO, TX

Date: APR 07 2008

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:

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 Acting District Director, San Antonio, Texas 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 Honduras who, on December 19, 1999, was placed into immigration proceedings under the name [REDACTED] for having entered the United States without inspection. On the same day, the applicant was placed on an Order of Release on Recognizance and informed that he was required to present himself to the San Antonio, Texas Deportation Office on the first Tuesday of every month. On July 28, 2000, the applicant was ordered removed *in absentia*. The applicant failed to depart the United States. On February 5, 2004, the applicant married his U.S. citizen spouse, [REDACTED] (Ms. [REDACTED]). On March 5, 2004, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on January 3, 2005. On April 11, 2005, the applicant filed the Form I-212. 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). 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 children.

The acting district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Acting District Director's Decision* dated August 30, 2006.

On appeal, the applicant contends that there is no record that he received notification of his immigration hearing, he did not marry his wife simply to obtain immigration benefits and there is no evidence that he faced the near certainty of removal from the United States when he failed to appear at his immigration hearing. *See Form I-290B*, dated September 22, 2006. In support of his contentions, the applicant submits only the referenced Form I-290B. The entire record was considered 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 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 [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] do not appear to have any children together. The applicant is in his 20's and [REDACTED] is in her 30's.

The AAO now turns to a consideration of positive and adverse factors in the present case.

On appeal, the applicant asserts that there is no record that he received notice of his immigration hearing. However, the applicant's claim is disputed by a declaration he submitted in response to a request for evidence issued by the San Antonio District Office on October 27, 2006. In a declaration, the applicant does not state that he failed to appear for his immigration hearing because he had not been notified of his hearing date. The applicant states that he did not appear at his scheduled removal hearing because he did not know how to drive, had no transportation at the time, did not know the location of San Antonio, Texas and did not know of anyone who could inform him of the location of San Antonio, Texas. The Record of Deportable/Inadmissible Alien (Form I-213) indicates that the applicant's parents were residing in Houston, Texas at the time of the applicant's entry into the United States. Furthermore, the record establishes that the applicant was informed in person, in the Spanish language, that if he failed to report to the San Antonio, Texas Deportation Office or appear for an immigration hearing that his order of release would be revoked and that he would be ordered removed *in absentia*. Finally, the applicant's claim that he was not informed of his hearing date, does not alter the fact that he was ordered removed from the United States on July 28, 2000. It is this order of removal that renders the applicant inadmissible to the United States and for which he seeks a waiver.

The AAO notes that the applicant asserts that, without knowing for what relief he could have applied at the immigration hearing, the acting district director erred in finding that he faced the near certainty of removal when he failed to appear and that he did not marry his wife in order to procure immigration benefits and that they have a very good and solid marriage. However, the applicant's assertions are not relevant to an application for permission to reapply for admission and will not be addressed by the AAO.

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 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.

As established by the record, the favorable factors in this matter are the applicant's U.S. citizen spouse and an approved immigrant visa petition for alien relative. The AAO notes that the applicant's marriage and filing of the immigrant visa petition benefiting him occurred after the applicant was ordered removed. Both of these factors are "after-acquired equities" and the AAO accords them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; misrepresentation of his name at the time of his apprehension; his failure to report in accordance with an order of release; his failure to appear before an immigration judge; and his extended unlawful presence and employment in the United States.

The applicant in the instant case has multiple immigration violations. 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 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.