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U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

H4

PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA  
(RELATES)

Date:

AUG 26 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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District 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 sustained and the application approved.

The applicant is a native and citizen of Mexico who, on September 9, 1977, was placed into immigration proceedings after he entered the United States without inspection. The record reflects that the applicant had been previously granted voluntary departure on August 20, 1977, August 22, 1977, August 27, 1977, August 29, 1977, and September 1, 1977. On September 9, 1977, the immigration judge ordered the applicant removed from the United States. On the same day the applicant was removed from the United States and returned to Mexico. On May 21, 1990, the applicant married his lawful permanent resident spouse, [REDACTED]. On July 31, 1992, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on August 14, 1992. On November 14, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On September 30, 2003, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. The applicant testified that he had remained outside the United States until 1982 when he reentered the United States without permission or admission. On October 14, 2003, 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 lawful permanent resident spouse.

The district director determined that the applicant did not warrant a favorable exercise of discretion and denied his Form I-212 accordingly. *See District Director's Decision* dated April 24, 2006.

On appeal, counsel contends that the applicant does not require permission to reapply for admission and, alternatively that, the applicant's favorable factors outweigh the negative factors in his case. *See Counsel's Brief*, dated May 22, 2006. In support of his contentions, counsel submits the referenced brief, affidavits from the applicant, his spouse and his adult step-daughter, medical records, financial documents, letters of support, photographs and country condition reports. 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 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 Secretary has consented to the alien's reapplying for admission.

On appeal, counsel contends that the applicant does not require permission to reapply for admission into the United States because he remained outside the United States for the required five-year period. The AAO notes that prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), an individual who remained outside the United States for five years following his or her removal was no longer required to seek permission to reapply for admission. However, with the enactment of IIRIRA, the periods of inadmissibility for removed individuals were substantially lengthened.

The provision holding aliens inadmissible for a period of ten years applies to exclusion or deportation orders issued both before and after April 1, 1997, even to those applicant's who had remained outside the United States for the required one or five years under pre-IIRIRA law. *See Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs, dated March 31, 1997.*

The record of proceedings indicates that the applicant entered the United States without inspection and was ordered removed prior to April 1, 1997. The applicant was removed from the United States on September 9, 1977, and reentered without inspection in or prior to January 1982. 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 and citizen of Guatemala who became a lawful permanent resident in 1989. The applicant and [REDACTED] do not have any children together. At the time of the applicant and [REDACTED] wedding all of [REDACTED]' children were adults. [REDACTED] has a 48-year old daughter from a prior relationship who is a native of Guatemala who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1996. While the applicant states that his siblings reside in the United States and some have legal status in the United States, the record does not establish that these individuals are related to the applicant or that they have any legal status in the United states. The applicant is in his 50's and [REDACTED] is in her 70's.

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

On appeal, counsel asserts that the applicant's wife is a lawful permanent resident. He asserts that the United States has been [REDACTED]'s home since 1977. He asserts that [REDACTED]'s life has been riddled with difficulties she has had to overcome, such as the death of her first spouse in 1976. He asserts that [REDACTED] and the applicant have known each other since 1982. He asserts that the applicant has accepted [REDACTED]'s daughter and treated her kindly. He asserts that the applicant considers the applicant's daughter to be his own child and her daughter to be his grandchild. He asserts that the closeness and support of the extended family have drawn them to all live near to each other in Los Angeles, California. He asserts that besides [REDACTED]'s daughter, the applicant is stepfather to three other adult children in the United States. He asserts that all of the applicant's brothers and sisters live in the United States. He asserts that the applicant loves to spend his days and weekends with his wife.

Counsel asserts that [REDACTED] health has deteriorated over the years and she has had three surgeries for a hysterectomy, removal of the gallbladder and a urine bladder surgery. He asserts that [REDACTED] has multiple medical problems, including hypertension, hypercholesterolemia, polymyalgia, rheumatica and hearing loss, which must be closely monitored by her physician. He asserts that a Rheumatologist regularly treats [REDACTED] to manage her joint pain. He asserts that [REDACTED] is taking a number of medications, including Lotensin, Norvisec, calcium carb, tramadol, benazepril, prednisone, Tylenol, fossamax, celebrex, bextra, motrin, hydrocort, quinine sulfate and nortriptylin. He asserts that [REDACTED] must watch what she eats and the applicant has learned how to cook to ensure she remains healthy. He asserts that the applicant also ensures that [REDACTED] takes her medications. He asserts that the applicant and Ms. [REDACTED] have shared their life and have only been physically separated on two occasions when Ms. [REDACTED] visited Guatemala. He asserts that [REDACTED] would like nothing more than for the United States to welcome her beloved husband. He asserts that the applicant is the backbone of the family and they have watched their eleven grandchildren grow. He asserts that [REDACTED] cannot imagine what would happen to the applicant were he was removed from the United States. He asserts that [REDACTED] would be forced to choose between her home of 29 years, her four children, eleven grandchildren, her doctor and current health plan, her countless relatives in the United States or being with her soul-mate and true love that cares for her fragile body. He asserts that the applicant has lived a life free of crime, transgressions or vices and has demonstrated that he is a person of good moral character. He asserts that the only blemish on the applicant's history is his removal that occurred more than 28 years ago. He asserts that the applicant and [REDACTED] have paid their federal taxes.

Counsel submits a copy of the section on Mexico from the 2005 *United States Department of State Country Reports on Human Rights Practices*. Counsel asserts that the report indicates that Mexico is plagued with high poverty and crime rates, and discrimination against those with disabilities. He asserts that the minimum daily wage ranges from \$4.11 to \$4.34. He asserts that narcotics related killings and violence has increased, the police arbitrarily arrest and detain civilians and indigenous people's access to the judicial system is inadequate. He asserts that corruption, inefficiency, disregard for the law and lack of training continue to be major problems. He asserts that persons with disabilities continue to face discrimination in the areas of employment, education, access to health care and provision of other services. He asserts that, in light of the poverty, inadequate health condition and high rate of violence in Mexico, there is a clear indication that Mexico is an unsafe and unstable country in which [REDACTED] would not have a positive future.

[REDACTED], in her affidavit, states that her life has been riddled with difficulties and she even considered suicide after her first spouse died in 1976. She states that she met the applicant in 1982. She states that even though she and the applicant do not have children together, the applicant considers her daughter to be his own and her granddaughter to be his grandchild. She asserts that her health has deteriorated and she has had a hysterectomy, her gallbladder was removed and urine bladder surgery. She states that she has multiple medical problems, including hypertension, hypercholesterolemia, polymyalgia, rheumatica and hearing loss, which must be closely monitored by her physician. She states that a rheumatologist regularly treats her to manage her joint pain. She states that she is taking a number of medications, including Lotensin, Norvisec, calcium carb, tramadol, benazepril, prednisone, Tylenol, fossamax, celebrex, bextra, Motrin, hydrocort, quinine sulfate and nortriptylin. She states that she must watch what she eats and that the applicant has learned how to cook for her to ensure she remains healthy. She states that the applicant ensures that she takes her medications. She states that she has grown increasingly dependent on the applicant, emotionally and physically. She states that they have only been separated on two occasions when she visited Guatemala. She states that the applicant is the backbone of the family. She states that she and the applicant love to watch their eleven grandchildren grow. She states that the applicant has become and remains the center of her life. She states that if the applicant is removed from the United States she would be forced to chose between her home of 29 years, her four children, eleven grandchildren, her doctor and current health plan, her countless relatives in the United States or being with her soul-mate and true love who cares for her fragile body. She states that this possibility makes her feel ill.

The applicant, in his affidavit, states that he has lived his life free from crime, transgressions or vice. He states that he met [REDACTED] in 1982. He states that even though he and [REDACTED] do not have children together, he considers her daughter to be his own and her granddaughter to be his grandchild. He states that his three brothers and one sister reside in the United States. He asserts that [REDACTED] health has deteriorated and she has had a hysterectomy, her gallbladder was removed and urine bladder surgery. He states that [REDACTED] has multiple medical problems, including hypertension, hypercholesterolemia, polymyalgia, rheumatica and hearing loss, which must be closely monitored by her physician. He states that a rheumatologist regularly treats [REDACTED] to manage her joint pain. He states that [REDACTED] is taking a number of medications, including Lotensin, Norvisec, calcium carb, tramadol, benazepril, prednisone, Tylenol, fossamax, celebrex, bextra, Motrin, hydrocort, quinine sulfate and nortriptylin. He states that he has been blessed with a wonderful wife and eleven grandchildren. He states that he cannot imagine what would happen to him if he were removed from the United States. He states that [REDACTED] is not a Mexican citizen and does not know his country. He states that [REDACTED] **children, family and doctors** are in the United States and she dreams of becoming a U.S. citizen. He states that he is [REDACTED] financial support and that, because of his age, country conditions in Mexico and his skills, he does not believe he could find employment in Mexico sufficient to support two households.

[REDACTED] daughter, [REDACTED], in her affidavit, states that the applicant and her mother have been inseparable since they met and that her mother's life changed when she met the applicant. She states that the applicant has been good to her and her family. She states that she and her siblings consider the applicant to be their father. She states that her daughter views the applicant as her grandfather. She states that the applicant is the backbone of the family and their lives center on him and her mother. She states that her mother's health has deteriorated and the applicant has been and continues to be there for her. She states that her mother would have to decide between her children and family, her doctor and

current health plan, her countless relatives in the United States and her dream of becoming a U.S. citizen or being with the applicant in Mexico.

A letter from [REDACTED] states that [REDACTED] is his patient and is being followed for multiple medical problems, including hypertension, hypercholesterolemia, polymyalgia, rheumatica and hearing loss. He states that [REDACTED] is taking a number of medications, including Lotensin, Norvisec, calcium carb, tramadol, benazepril, prednisone, Tylenol, fossamax, celebrex, bextra, Motrin, hydrocort, quinine sulfate and nortriptylin. He states that a rheumatologist regularly treats [REDACTED] to manage her polymyalgic rheumatica. He states that [REDACTED] joint pain has been fairly severe and she has been under his care for more than five years.

Letters of support from family state that the applicant is a good citizen who does not seek to harm others and has never caused any trouble. They state that the applicant is an excellent, responsible, hardworking, positive, caring person of good character and behavior. They state that he is viewed as a father figure by his stepchildren and as a caring uncle by his nieces and nephews.

A letter from the applicant's employer indicates that the applicant is a decent and honest worker whom he could recommend for any job. He states that the applicant demonstrates responsibility and is hard working.

The record reflects that the applicant paid federal taxes in 1992 and 1997 through 2004. The record establishes that the applicant was issued employment authorization from November 21, 1997 until November 11, 1999.

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 7<sup>th</sup> Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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 lawful permanent resident spouse, his U.S. citizen stepdaughter, the absence of a criminal record, the general hardship that family members would suffer if the applicant is denied admission, his wife's health problems, his payment of federal taxes and an approved immigrant visa petition for alien relative. The AAO notes that the applicant's marriage, the establishment of his relationship to his stepdaughter, and the filing of the immigrant visa petition benefiting him occurred after the applicant was placed into immigration proceedings. All 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; his unlawful reentry into the United States after having been removed; his extended unlawful presence in the United States; and periods of unauthorized employment.

The applicant's original illegal entry into the United States, his unlawful reentry into the United States after having been removed, his extended unlawful presence in the United States, and his unauthorized employment in the United States, cannot be condoned. However, the AAO finds that given all of the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

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 established that a favorable exercise of the Secretary's discretion is warranted.

**ORDER:** The appeal is sustained and the application approved.