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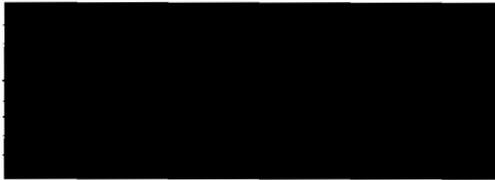
IN RE:

Applicant:



APPLICATION: Application for Permission to Reapply for Admission into the United States after  
Deportation or Removal under Section 212(a)(9)(A) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala. Based on the Order to Show Cause (OSC), dated July 5, 1994, the applicant initially entered the United States without inspection in April 1988. On June 19, 1993, the applicant was charged with two counts of second degree sexual assault. On July 5, 1994, an OSC was issued against the applicant. On September 8, 1994, the applicant was convicted of simple assault/battery and was sentenced to one (1) year suspended sentence and one (1) year probation. On December 28, 1994, an immigration judge ordered the applicant deported from the United States. On February 14, 1995, a Warrant of Deportation (Form I-205) was issued. On May 19, 1995, the applicant was deported from the United States. Based on the applicant's record of sworn statement, the applicant reentered the United States without inspection in 1997. On an unknown date, the applicant departed the United States. According to the applicant's Petition for Alien Relative (Form I-130), filed on March 29, 2001, the applicant reentered the United States without inspection in April 2000. On an unknown date, the applicant departed the United States. According to the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485), filed on September 21, 2001, the applicant reentered the United States without inspection on May 26, 2000. On March 29, 2001, the applicant's naturalized United States citizen wife filed a Form I-130 on behalf of the applicant. On July 31, 2001, the applicant's Form I-130 was approved. On September 21, 2001, the applicant filed a Form I-485. On December 11, 2001, the applicant's prior order of deportation was reinstated. On January 2, 2002, another Form I-205 was issued. On January 28, 2002, the applicant was removed from the United States. On September 21, 2002, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On January 6, 2004, the Director denied the applicant's Form I-212. On June 1, 2004, the applicant reentered the United States without inspection. On June 2, 2004, the applicant's prior order of deportation was reinstated. On November 4, 2004, the applicant was convicted of Illegal Reentry after Deportation, in violation of U.S.C. § 1326(a), and was sentenced to ten (10) months in jail and two (2) years probation. On March 31, 2005, a Notice to Appear (NTA) was issued against the applicant. On November 17, 2006, an immigration judge ordered the applicant removed from the United States. On January 3, 2007, an immigration judge ordered the applicant removed from the United States. On January 18, 2007, another Form I-205 was issued. On February 24, 2007, the applicant was removed from the United States. The applicant is inadmissible to the United States until September 15, 2024 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 now 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 with his United States citizen wife and stepchildren.

The Director determined that the applicant is inadmissible to the United States, the unfavorable factors outweigh the favorable factors, and he denied the applicant's Form I-212 accordingly. *Director's Decision*, dated January 6, 2004.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(i) Arriving Aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 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 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, counsel states the Director "utterly failed to consider [the applicant's] favorable factors, while completely misconstruing his negative factors." *Appeal Brief*, dated February 6, 2004. Counsel states that the applicant's positive equities are his United States citizen wife and three children, the suffering of his wife and children, and the applicant's "character and contributions to

his community and church.” *Id.* states the applicant’s stepchildren “presented as troubled, confused, and saddened by [the applicant’s removal] and the loss of their stepfather, with whom they have a good relationship.” *Letter from [REDACTED] MA, Clinical Therapist, dated August 20, 2002.* [REDACTED] states the applicant’s wife was having “a stress reaction.” *Letter from [REDACTED] Consulting Psychologist, undated.* However, Ms. [REDACTED] stated that since the time that the applicant’s wife came to see her, the applicant’s wife “has been able to manage somewhat better.” *Id.* The AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant’s wife and stepchildren, but it will be just one of the determining factors. The applicant’s wife states that before the applicant was deported from the United States in 2002, they had “many plans for the future.... [The applicant] was the father figure that [her] children needed...[The applicant] not only contributed financially to [them] but to his family in Guatemala as well.” *Letter from [REDACTED] dated August 22, 2002.* The AAO notes that any time that the applicant was employed in the United States was without authorization and that is an unfavorable factor. Additionally, the numerous years that the applicant was present in the United States was without authorization and that is an unfavorable factor. Furthermore, the applicant’s numerous reentries into the United States without inspection demonstrates a callous disregard for United States immigration law and is an unfavorable factor.

The record of proceeding reveals that on December 28, 1994, an immigration judge ordered the applicant deported from the United States. On February 14, 1995, a Form I-205 was issued. On May 19, 1995, the applicant was deported from the United States. The applicant reentered the United States without inspection. On December 11, 2001, the applicant’s prior order of deportation was reinstated. On January 2, 2002, another Form I-205 was issued. On January 28, 2002, the applicant was removed from the United States. The applicant reentered the United States without inspection. On June 2, 2004, the applicant’s prior order of deportation was reinstated. On November 17, 2006, an immigration judge ordered the applicant removed from the United States. On January 3, 2007, an immigration judge ordered the applicant removed from the United States. On January 18, 2007, another Form I-205 was issued. On February 24, 2007, the applicant was removed from the United States. Based on the applicant’s previous removals from the United States, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

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 unlawfully. *Id.*

Where an applicant is seeking discretionary relief from removal or deportation and the courts are required to weigh favorable equities or factors against unfavorable factors, many have repeatedly upheld the general principal that less weight is given to equities acquired by an alien after an order of deportation or removal has been issued. The AAO notes that the applicant's Form I-212 involves a similar weighing of equities or favorable factors against unfavorable factors in order to determine whether to grant discretionary relief.

In *Garcia-Lopez v. INS*, 923 F.2d 72 (7<sup>th</sup> Cir. 1991), for example, the Seventh Circuit Court of Appeals (Seventh Circuit) reviewed a Board denial of an alien's request for discretionary voluntary departure relief. The Seventh Circuit found that the Board's denial rested on discretionary grounds, and that the Board had weighed all of the favorable and unfavorable factors and stated the reasons for its denial of relief. The Seventh Circuit affirmed the general principle that less weight may be accorded to equities acquired after an order of deportation is issued, and the Seventh Circuit concluded that the Board had not abused or exercised its discretion in an arbitrary or capricious manner.

In *Bothyo v. Moyer*, 772 F.2d 353, 357 (7<sup>th</sup> Cir. 1985), the Seventh Circuit reviewed a discretionary stay of deportation case that weighed and balanced favorable and unfavorable factors. The Seventh Circuit stated that an alien's marriage to a lawful permanent resident did not necessitate the granting of a stay of deportation because the marriage occurred after deportation proceedings had commenced and after an OSC had been issued against the alien. The Seventh Circuit then affirmed the general principle that an "after-acquired equity" need not be accorded great weight by a district director in his or her consideration of discretionary weight.

In *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1006 (9<sup>th</sup> Cir. 1980), the Ninth Circuit Court of Appeals (Ninth Circuit) reviewed a discretionary suspension of deportation case. The Ninth Circuit affirmed the principle that post-deportation equities are entitled to less weight in determining hardship. In doing so, the Ninth Circuit referred to the 1980 decision, *Wang v. INS*, 622 F.2d 1341, 1346 (9<sup>th</sup> Cir. 1980) (overruled on unrelated grounds). In *Wang*, the alien sought discretionary relief and a finding of extreme hardship through a motion to reopen deportation proceedings. The Ninth Circuit held in *Wang*, that "[e]quities arising when the alien knows he is in this country illegally, e.g. after a deportation order is issued, are entitled to less weight than equities arising when the alien is legally in this country."

In *Ghassan v. INS*, 972 F.2d 631, 634-35 (5<sup>th</sup> Cir. 1992), the Fifth Circuit Court of Appeals (Fifth Circuit) reviewed a section 212(c) waiver of deportation discretionary relief case that involved the balancing of favorable and unfavorable factors. The Fifth Circuit found no abuse of discretion in the Board's weighing of equitable factors against unfavorable factors in the alien's case, and the Fifth Circuit affirmed the principle that as an equity factor, it is not an abuse of discretion to accord diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien spouse's possible deportation.

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 hardship to a spouse and for purposes of assessing favorable equities in the exercise of discretion.

The favorable factors in this matter are the applicant's family ties to his United States citizen wife and stepchildren, general hardship they may experience, letters of recommendation, and the approval of a visa petition filed by the applicant's wife on his behalf. The AAO notes that the applicant's marriage to his wife occurred on March 10, 2001, which was after the applicant was ordered deported from the United States, and is an after-acquired equity. As an after-acquired equity this factor will be given less weight.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his criminal record, his illegal reentries into the United States subsequent to his May 19, 1995 and January 28, 2002 removals, his lengthy periods of unauthorized presence in the United States, and his unauthorized employment in the United States.

The AAO notes that the applicant's record shows a pattern of callous disregard for the laws of the United States and his actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

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.