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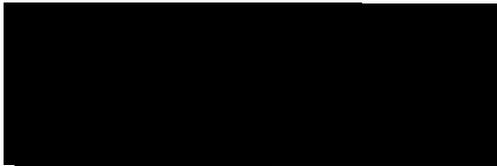
U.S. Department of Homeland Security
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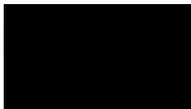
U.S. Citizenship
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Services

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FILE:



Office: NEWARK, NEW JERSEY
[consolidated therein]

Date: FEB 01 2008

IN RE:

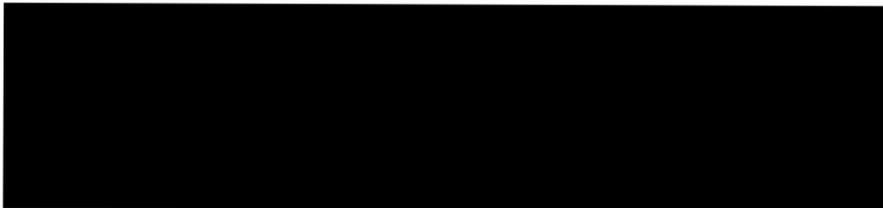
Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Acting District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reveals that the applicant is a native and citizen of Colombia who had her first son, Cristian, on October 17, 1994, in Colombia. On September 19, 1995, the applicant initially entered the United States by presenting a Resident Alien Card (I-551), belonging to another individual.¹ On the same day, an Order to Show Cause (OSC) was issued for the applicant. On September 27, 1995, an immigration judge ordered the applicant excluded and deported from the United States. On the same day, the applicant was deported to Mexico. On October 17, 1995, the applicant entered the United States without inspection. On March 6, 1997, the applicant married [REDACTED] a lawful permanent resident, in New Jersey. On May 30, 1997, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On August 11, 1997, the applicant's Form I-130 was approved. On May 11, 1998, the applicant's husband became a United States citizen. On July 13, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On January 25, 2001, the applicant's Form I-485 was denied. On February 7, 2001, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On April 22, 2002, the applicant's Form I-212 was denied by the District Director, Cherry Hill, New Jersey. On June 4, 2002, the applicant, through previous counsel, filed an appeal to the AAO. On January 28, 2003, the AAO dismissed the applicant's appeal. On March 1, 2003, the applicant, through current counsel, filed a motion to reopen the AAO's decision dismissing her appeal. On July 20, 2004, the applicant's daughter, [REDACTED] was born in New Jersey. On December 15, 2004, the applicant filed a second Form I-212. On August 6, 2006, the applicant's son, [REDACTED] was born in New Jersey. On October 5, 2006, the District Director administratively terminated the motion to reopen because the applicant had a pending Form I-212. On December 11, 2006, the Acting District Director denied the applicant's second Form I-212. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). She 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 her naturalized United States citizen husband and three children.

The Acting District Director determined that the applicant is inadmissible pursuant to sections 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), 212(a)(9)(B) of the Act, 8 U.S.C. § 212(a)(9)(B), and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for being ordered removed under section 240 or any other provision of law, for being unlawfully present in the United States for one year or more, and for seeking admission into the United States through fraud or misrepresentation, respectively. The Acting District Director found that the unfavorable factors in the applicant's case outweighed the favorable factors, and he denied the applicant's Form I-212 accordingly. *Acting District Director's Decision*, dated December 11, 2006.

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

¹ When apprehended, the applicant stated she was a native and citizen of Mexico, and her name was [REDACTED]; therefore, the applicant's deportation case is under [REDACTED]

(A) Certain alien 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 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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

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, the applicant, through counsel, states the "Acting District Director used the wrong standard for adjudicating the I-212.... [T]he Acting District Director discussed the lack of extreme hardship that the applicant's USC husband would suffer if she were removed from the U.S. which is the standard for an I-601 Waiver Application. The I-212 Waiver application should have been granted as the applicant has not committed

any crimes and has had good moral character since her last entry into the U.S. in October 1995 (over eleven years ago); she was ordered excluded on September 27, 1995 (over eleven years ago); her services are needed in the U.S. by her USC husband to whom she has been married for almost 10 years, her twelve-year-old LPR son of whom she has sole custody, her two-year-old native USC daughter, and her five-month-old native USC son who all currently live with her in the U.S.; and the fact that she has been continuously physically present in the U.S. since October 17, 1995.” *Form I-290B*, filed January 16, 2007. The AAO notes that the applicant has been residing in the United States without authorization for many years, and this is an unfavorable factor. The applicant’s husband states it will be an extreme hardship if the applicant is removed from the United States, because he would lose the applicant’s economic support and the children would lose their mother. *Affidavit from [REDACTED]* dated November 29, 2004. The AAO notes that the applicant’s husband has many family members residing in the United States, and it has not been established that they could not help care for the applicant’s children. The applicant states that if she returns to Colombia, she could not find employment. *Affidavit from the applicant*, dated November 29, 2004. The AAO notes that when the applicant resided in Colombia, she worked as a designer, and in the United States, she has been working for many years in the fashion industry, and there has been no evidence submitted demonstrating that she could not obtain employment in Colombia. Additionally, the AAO notes that the applicant submitted numerous income tax documents demonstrating that she has been working for many years without authorization, and this is an unfavorable factor. The applicant states that she is afraid to return to Colombia because of her family’s political ties, and she states that she illegally reentered the United States because of those fears. *Id.* The AAO notes that the applicant and her husband previously stated the applicant “was forced to leave her son and her native country due to adverse economic circumstances hoping to build a better future for both of them in the United States.” *Letter from the applicant and [REDACTED]*, dated January 15, 2002. Regarding the hardship the applicant’s husband and children may face, 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 spouse and children, but it will be just one of the determining factors.

The record of proceedings reveals that on September 27, 1995, an immigration judge ordered the applicant excluded and deported from the United States. On the same day, the applicant was deported from the United States. On October 17, 1995, the applicant reentered the United States without inspection. Based on the applicant’s previous order of deportation, 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 principle 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 (7th Cir. 1991), for example, the Seventh Circuit Court of Appeals (Seventh Circuit) reviewed a Board of Immigration Appeals (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 (7th 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 (9th 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 (9th 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 (5th 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 United States citizens and a lawful permanent resident, her husband and children, general hardship they may experience, the approval of a petition for alien relative, and no criminal record. The AAO notes that the applicant’s marriage to her husband occurred after her order of deportation 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 attempted entry into the United States by presenting a Resident Alien Card in someone else’s name, her willful perpetuation of fraud by providing a false name, birth date, and place of nationality and citizenship, her reentry without inspection into the United States subsequent to her September 27, 1995 deportation, and periods of unauthorized presence and employment.

The applicant’s 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 she 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.