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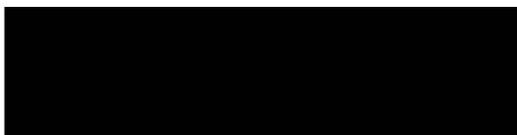
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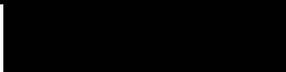
U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

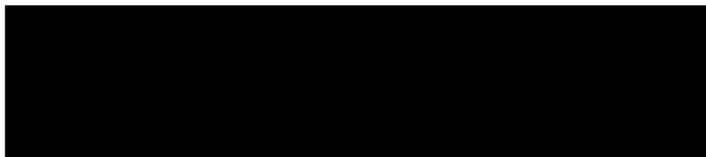
Date: JAN 07 2008

IN RE:



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:



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, Vermont 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 El Salvador who, on January 31, 1997, was placed into immigration proceedings for having entered the United States without inspection. On October 11, 1997, the immigration judge ordered the applicant removed *in absentia*. On October 16, 1997, a warrant was issued for the applicant's removal. The applicant failed to comply with the order of removal. In 2001, the applicant applied for Temporary Protected Status (TPS). The applicant was granted TPS and she has extended her TPS yearly since that date. On June 26, 2003, the applicant married her spouse, [REDACTED]. On May 20, 2004, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 her husband and U.S. citizen children.

The director determined that the applicant was inadmissible pursuant to section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), as an alien present in the United States without inspection or admission and that no waiver is available for the applicant's inadmissibility under section 212(a)(6)(A) of the Act. 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 April 15, 2005.

On appeal, counsel contends that the applicant needs permission to reapply for admission so that she can travel to El Salvador. *See Form I-290B*, dated May 10, 2005. In support of his contentions, counsel submits the referenced Form I-290B, DNA results, an affidavit from family friends, financial documentation and documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens 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 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

Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

The record reflects that the applicant failed to comply with an order of removal. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and must receive permission to reapply for admission.

The applicant and her husband are in their 30's and have a ten-year old son and a four-year old daughter. Although the record establishes the applicant's children are U.S. citizens by birth, it does not demonstrate that [REDACTED] holds either U.S. citizenship or lawful permanent resident status. On appeal counsel asserts that [REDACTED] is the beneficiary of an approved Petition for Alien Worker (Form I-140) and has an Application to Register Permanent Residence or Adjust Status (Form I-485) pending before the immigration court, with an adjustment of status hearing scheduled for October 19, 2005. The record does not, however, support counsel's claim that [REDACTED] is in the process of adjusting his status and Citizenship and Immigration Services (CIS) records, while they confirm that [REDACTED] is the beneficiary of an approved Form I-140, indicate that, as recently as 2007, he filed for an extension of his TPS.

[REDACTED], in an affidavit accompanying the Form I-212, states that he has lived with the applicant since 1997 and they have two U.S. citizen children together.

The applicant, in an affidavit accompanying the Form I-212, states that she did not appear for her immigration hearing in 1997 because she did not have the money to hire a representative or to travel to Texas. She states that she has lived with her husband since 1997. She states that she has two children with her husband and that he will receive lawful permanent resident status through a labor certification. She states that she has never left the United States and loves this country.

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. *Supra*.

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 only favorable factors in this matter are the applicant's U.S. citizen children as the record fails to establish that [REDACTED] holds either U.S. citizenship or lawful permanent resident status.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; her failure to appear for an immigration hearing; her failure to comply with an order of removal; and her unlawful presence in the United States prior to being granted TPS.

The applicant in the instant case has multiple immigration violations. The AAO finds that the birth of the applicant's children occurred after the applicant was placed into proceedings and ordered removed. The AAO finds these factors to be "after-acquired equities" and therefore accords 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.

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