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

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 30 2008
[consolidated therein]

IN RE: Applicant: [redacted]

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:

[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 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 the Dominican Republic who entered the United States without inspection on July 16, 1993. On July 20, 1993, an Order to Show Cause (OSC) was issued against the applicant. On October 7, 1993, an immigration judge ordered the applicant deported *in absentia* from the United States. The applicant failed to depart the United States. On October 19, 1993, a Warrant of Deportation (Form I-205) was issued for the applicant. On November 29, 1995, the applicant married [redacted] a naturalized United States citizen, in New York. On April 25, 1996, the applicant's daughter, [redacted] was born in New Jersey. On February 10, 1999, the applicant's daughter, [redacted], was born in New Jersey. On March 7, 2000, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On March 9, 2001, the applicant's Form I-130 was approved. On June 17, 2003, the applicant's husband filed another Form I-130 on behalf of the applicant. On October 14, 2003, the applicant's second Form I-130 was approved. 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), 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 two children.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being ordered removed under section 240 or any other provision of law. The Director found that the unfavorable factors in the applicant's case outweighed the favorable factors, and he denied the applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated September 22, 2006.

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

(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.

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 asserts that the applicant's Form I-212 was "wrongfully denied." *Form I-290B*, filed October 20, 2006. In regards to the applicant's apprehension at the border on July 16, 1993, counsel states the applicant "did not read or speak English and the man traveling with her advised her to sign all the papers without her knowledge of what these [sic] information these documents contained." *Appeal Brief*, page 2, dated October 17, 2006; *see also affidavit from the applicant*, dated February 20, 2006 ("The Immigration officials gave me documents to sign none of which I understood since I spoke no English. The gentleman I traveled with advised me to sign these papers, and I did."). The AAO notes that the record contains signed documents pertaining to the applicant's apprehension and the documents are in Spanish. Counsel asserts that the applicant did not receive any notices from the immigration court or the deportation order. However, the AAO notes that the OSC was sent to the applicant's last known address, which the applicant claims is her brother's address, and the green Return Receipt card was signed by [redacted] on July 26, 1993.[1] Additionally, when comparing the signatures from the applicant's apprehension documents to the green Return Receipt card, the signatures are the same. The AAO notes that the immigration judge's order was also sent to the last known address for the applicant. Counsel claims that the applicant "and her husband have two daughters who they must take care of; and [the applicant] has been living in the United States for over thirteen (13) years since her arrival to the United States." *Appeal Brief*, page 4, *supra*. The applicant claims that she has "been living in this country illegally, but only because [her] family is here. [She] cannot imagine living without them." *Affidavit from the applicant, supra*. The AAO notes that the applicant has resided in the United States for many years without authorization and that is an unfavorable factor. Additionally, the applicant submitted documents establishing that she is currently employed without authorization and that is another unfavorable factor. The applicant's husband states that if the applicant is "not allowed to adjust her status in the United States, it would devastate [their] family. [The applicant] works some and primarily takes care of [their] daughter and [their] home...[The applicant's] absence would cause [their] family great hardship. She not only takes care of [their] home, she provides [his] family with love and emotional support." *Affidavit from* [redacted], dated March 30, 2004. 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

[1] When the applicant was apprehended, she used the name [redacted]

to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's spouse and daughters, but it will be just one of the determining factors.

The record of proceedings reveals that on October 7, 1993, an immigration judge ordered the applicant deported from the United States. The applicant failed to depart the United States. On October 19, 1993, a Warrant of Deportation was issued for the applicant. 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 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 (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, 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 entry without inspection, her failure to appear at her removal hearing and extended 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.