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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 15 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) 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, California 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 Mexico who entered the United States without inspection in 1987, was ordered removed *in absentia* from the United States on October 1, 1998 and was subsequently removed from the United States on February 6, 2004.¹ The applicant is inadmissible to the United States pursuant to 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii).² The applicant 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 in the United States.

The director found the applicant to be an applicant for admission and determined that her office lacked jurisdiction to adjudicate the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) and denied the application accordingly. *Director's Decision*, at 2, dated February 8, 2007.

On appeal, counsel asserts that the applicant's children are suffering extreme and economic hardship in the absence of the applicant. *Brief in Support of Appeal*, at 2, dated March 8, 2007.

The director cited 8 C.F.R. § 212.2(d) in asserting that her office lacked jurisdiction to adjudicate the application. *Director's Decision*, at 2. This section provides that an applicant who is applying for an immigrant visa and requires a Form I-601, Application for Waiver of Grounds of Inadmissibility, must file the Form I-212 with the American consul having jurisdiction over the applicant's place of residence. 8 C.F.R. § 212.2(d). However, the applicant is not an immigrant visa applicant and, therefore, he is not subject to 8 C.F.R. § 212.2(d). The director also states that if the applicant is applying for a nonimmigrant visa or nonresident alien border crossing card, that the Form I-212 should be filed with the American consul per 8 C.F.R. § 212.2(b) and 8 C.F.R. § 212.2(c). *Director's Decision*, at 2. However, the applicant is not applying for a nonimmigrant visa or nonresident alien border crossing card as mentioned in 8 C.F.R. § 212.2(b) or a nonimmigrant visa under section 101(a)(15)(K) of the Act as mentioned in 8 C.F.R. § 212.2(c).

The record indicates that the applicant is filing Form I-212 pursuant to 8 C.F.R. § 212.2(g) which states, in pertinent part:

- (1) Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section must file Form I-212. This form is filed with either: (i) the district director having jurisdiction over the place where the deportation or removal proceedings were held...

¹ On the applicant's Form I-589, Application for Asylum and for Withholding of Deportation, he indicates that he previously entered the United States without inspection in January 1981.

² The AAO notes that the applicant is also inadmissible for ten years from the date he was removed from the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II) for accruing over one year of unlawful presence and subsequently departing the United States. As such, he would be required to file Form I-601, Application for Waiver of Grounds of Inadmissibility. The record is not clear as to whether the applicant has the requisite qualifying relative needed to file Form I-601.

The record reflects that the applicant filed Form I-212 with the district director of the Los Angeles Citizenship and Immigration Services (CIS) Office and that this CIS office has jurisdiction over the place where his removal proceedings were held (Los Angeles). As such, the application was properly filed and the AAO will adjudicate the merits of the applicant's Form I-212.

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

(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.

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.

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 *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 favorable equities in the exercise of discretion.

In regard to the favorable factors, counsel states that the applicant has four U.S. citizen children. *Brief in Support of Appeal*, at 2. The applicant states that his children depend on him emotionally and financially. *Applicant's Statement*, at 3, undated. Counsel also states that the applicant's spouse is in the United States. *Brief in Support of Appeal*, at 2. The AAO notes that the applicant's spouse's immigration status is not indicated in the record. The applicant states that he has a U.S. citizen brother and a lawful permanent resident brother. *Applicant's Statement*, at 3. The record includes birth certificates for the applicant's four U.S. citizen children (ages 4, 10, 14 and 16) and a copy of his brother's lawful permanent resident card.³ The record also includes numerous statements related to the applicant's good moral character. The record reflects that the applicant does not have a criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's entrances without inspection, his extended periods of unauthorized stay (and inadmissibility under section 212(a)(9)(B) of the Act for his departure from the United States after more than one year of unlawful presence), his unauthorized employment, his failure to attend his removal hearing and his failure to depart pursuant to his removal order.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors in this matter 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.

³ The AAO notes that two of the applicant's children are after-acquired equities and are therefore given diminished weight.