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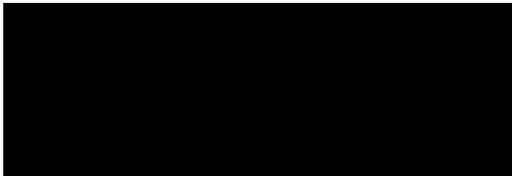
Date: **JUL 30 2008**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Phoenix, Arizona 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 Mexico who, on February 25, 2000, appeared at the San Ysidro, California Port of Entry. The applicant presented an I-551 Lawful Permanent Resident Card bearing the name "[REDACTED]" The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain admission to the United States by fraud. On February 25, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant reentered the United States without permission or admission on an unknown date, but prior to April 6, 2001, the date on which the applicant's U.S. citizen spouse, [REDACTED], filed a Petition for Alien Relative (Form I-130) on behalf of the applicant that indicated the applicant had reentered the United States without inspection. On January 28, 2003, the applicant filed the Form I-212, along with an Application for Waiver of Grounds of Inadmissibility (Form I-601). On September 19, 2006, the Form I-130 was approved. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). He 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 reside in the United States with his spouse.

The district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision* dated April 6, 2007.

On appeal, counsel contends that the district director failed to consider the applicant's explanations for his unfavorable factors, his family ties, community service and the absence of a criminal record. *See Counsel's Letter*, dated July 5, 2007. In support of his contentions, counsel submits the referenced letter, letters from family and friends, certificates for donations and membership cards. The entire record was considered in rendering a decision in this case.

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

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five 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 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 on a 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 Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant married [REDACTED] on February 14, 1997, in Maricopa County, Arizona. [REDACTED] is a citizen of the United States by birth. The applicant and Ms. [REDACTED] do not appear to have any children together. The applicant's brother, [REDACTED] away on April 1, 2005. The applicant's brother was a native and citizen of Mexico who became a lawful permanent resident in 1990. Unfortunately, since the applicant's brother is no longer living, he cannot be considered a positive factor in exercising discretion. The applicant is in his 30's and [REDACTED] is in her 40's.

The AAO now turns to a consideration of positive and adverse factors in the present case.

On appeal, counsel asserts that the district director did not address the applicant's explanations for his unfavorable factors. He asserts that the applicant's older wife will suffer without the applicant's presence in the United States. He asserts that the applicant's employer requires his services. He asserts that the applicant is a person of good moral character who has reformed and that his violations of immigration laws were not evil in nature but done in order to be with his family. He asserts that the basis of the applicant's removal was not for criminal behavior that was vile or depraved, or for behavior that would lead a reasonable person to believe the applicant is a danger to the community. He asserts that the district director failed to consider all the factors in the applicant's case, including the applicant's family ties, community service and the absence of a criminal record.

The applicant, in a letter dated July 16, 2007, states that he is sorry for breaking the laws of the United States and that he had to return to the United States in order to be with his wife. He states that he loves his wife. He states that he has been in the United States since he was 16 years old. He states that he has no home in Mexico and he wants to be a part of the United States. He states that he wants to live free from the fear of being taken from his wife.

[REDACTED] in her letters, states that her marriage and her life is worth fighting for. She states that breaking the law was not the first thing on the applicant's mind when he reentered the United States after having been removed. She states that the applicant wanted to return to her, his wife, to the place where he belongs. She states that his actions are those of a devoted husband. She states that his breaking of only one of the laws of the United States, when he has lived in the United States for 12 years without breaking any other law, does not establish that he has failed to reform or has a callous attitude towards the laws of the United States. She states that the applicant has not been arrested or convicted of any crimes since his removal because he obeys the law. She states that the applicant does not drive because he does not have a valid driver's license, they cannot buy a house because it would mean falsifying documents, they cannot have a joint bank account and she cannot name him as the beneficiary because he does not have proper identification, and she cannot put him on her health insurance. She states that the applicant was unable to pay his respects to his brother, who passed away in Pennsylvania, because he had no social security number or identity document

and he will not obtain them illegally. She states that it was not the applicant's intention to bring this hurt upon her. She states that God did not bring them together, as one, to have them separated. She states that a husband's place is with his wife. She states that it is the applicant's responsibility to be with her and to care for her, and that he cannot do that from Mexico. She states that the applicant loves and respects the United States. She states that the applicant understands, speaks and reads English very well and also writes English. She states that the applicant is a very hard worker and is very good at his job. She states that the applicant has worked for the same man for over eleven years. She states that the applicant does a job that most Americans are unable or unwilling to do. She states that the applicant does what he must to make ends meet. She states that, without the applicant, she would have to find a second job and that would prove difficult at her age. She states that the applicant pays for his medical care in the United States, does not receive government assistance and makes charitable contributions to various causes. She states that the applicant helps their neighbors whenever they need help. She states that neither she nor the applicant have any friends upon which they can rely. She states that she does have one brother with whom she talks, but she does not want to bother him with their troubles. She states that the applicant is all that she has. She states that her family has a history of ovarian cancer and that her chances of developing this cancer are high. She states that without the applicant she would not have anyone to care for her. She states that she needs the applicant's support and strength.

states that accompanying the applicant to Mexico is out of the question. She states that there are two classes of people in Mexico, rich and poor, and she would automatically belong to the poor. She states that she does not speak Spanish. She states that her chances to obtain employment in Mexico would be slim. She states that for an American to go to Mexico and attempt to earn a living would not be well received. She states that, with few jobs available, she would become a target for hate and prejudice. She states that an acquaintance experienced this prejudice and hatred first-hand when he worked in Mexico and married a local girl. She states that the man was not given the job or money that he was promised. She states that it would be the same for her and the applicant because they are an inter-racial couple. She states that she does not have any family in Mexico. She states that there is no means of support for her and the applicant in Mexico because the applicant does not have any relatives there who could provide financial support or resources. She states that country conditions reports establish that she would be destined to be without food, shelter, work, and/or basic necessities.

A letter from brother states that the applicant has been in the United States for over 15 years and that his sister will have to walk away from everything she has worked for and a job that she loves if the applicant's application is denied. He states that she would be going to a country in which she does not speak the language and working under such conditions would be dubious at best. He states that she has expressed a fear of being unable to receive the same quality of health care in Mexico, which is exacerbated by a family history of cancer, diabetes, and heart disease. He states that she already suffers from a bad back, knees and arthritis. He states that it would be hard to find the money to pay for any treatment that might be available in Mexico. He states that she fears leaving her dogs, both of whom are like children to her. He states that their family, excepting his relationship with is not close and that his last family tie would be cut if she went to Mexico. He states that the applicant is devoted to his sister.

A letter from employer, states that she has been an invaluable employee and he would find it very hard to replace her. He states that her loss would be a hardship to his business. A letter from the applicant's employer, states that the applicant was hired in February 1996 and operates a Bobcat that does the grading and drainage surrounding house sites. He states that the applicant's talent and willingness to work makes him a great asset. He states that he would be hard pressed to find

someone to replace such a conscientious worker and the company would suffer financially and also in terms of the quality work for which his company is known.

Recommendation letters state that the applicant is a good, patient, generous, giving, kind-hearted, hard-working man. They state that the applicant loves the United States because there is a lot of poverty in his home country. They state that [REDACTED] has a big heart. They state that the applicant has been a good neighbor and has always provided assistance when help was needed. They state that the applicant and [REDACTED] should remain in the United States. They state that it would be hard for them in Mexico. They state that [REDACTED] does not speak Spanish and obtaining employment in Mexico would be difficult. They state that Mexicans do not want foreigners taking what few employment opportunities they have. They state that inter-racial couples are treated as pariahs.

Certificates of commendation, founding member certificates and membership cards indicate that the applicant has made donations to various veterans, law enforcement and animal rights groups from 2001 through 2007.

Counsel submits a copy of the report on Mexico from the 2001 *United States Department of State Country Reports on Human Rights Practices*. The report states that a 1998 report described a definite pattern of rape and sexual assault against women committed by members of Mexico's security forces. It states that police abuse and inefficiency hamper investigations and that a U.N. Special Rapporteur voiced concerns over the inadequacy of investigations into violence against women. It states that there is a history of religious intolerance by indigenous communities. It states that the most pervasive violations of women's rights involve domestic and sexual violence, which are both widespread and vastly underreported. It states that sexual harassment in the workplace is widespread and a commission estimated that at least 80 percent of the women who work in Mexico City experience harassment. It states that the legal treatment of women's rights is unequal even though the constitution provides for equality. It states that women are generally paid less than men. It states that, in commercial transactions, bilingual middlemen take advantage of non-Spanish speakers who also have difficulty finding employment in Spanish-speaking areas. It states that the minimum wage was set at \$4.48 and does not provide a decent standard of living for workers and their families. The AAO notes that the country conditions report submitted by counsel is dated in 2001 and not the year in which the applicant submitted his Form I-212, 2003, or the year in which the appeal was filed, 2007.

The record reflects that the applicant has never been granted work authorization and that, on the Biographical Information Form (Form G-325) accompanying the Form I-130, the applicant failed to reveal his unauthorized employment in the United States by stating that he was not working.

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. *Id.*

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.

As established by the record, the favorable factors in this matter are the applicant's U.S. citizen spouse, the general hardship the applicant and [REDACTED] will suffer if he is removed from the United States, the absence of a criminal record, the applicant's donations to various charities and the immigrant visa petition approved on his behalf. The AAO notes, however, that the filing of the immigrant visa petition benefiting the applicant occurred after he was placed into proceedings. Accordingly, this factor is an "after-acquired equity" and the AAO will accord it diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; his unlawful presence and employment in the United States without authorization prior to his removal; his attempt to enter the United States by fraud; his inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act for attempting to enter the United States by fraud; his inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing more than one year of unlawful presence in the United States, from April 1, 1997, the date on which unlawful presence provisions were enacted under the Act, and the date on which he departed the United States prior to his February 25, 2000, attempted entry, and seeking admission within ten years of his last departure; his illegal reentry into the United States after having been removed; and his unlawful presence and employment in the United States since his reentry.

The applicant in the instant case has multiple immigration violations. The totality of the evidence demonstrates 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 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.