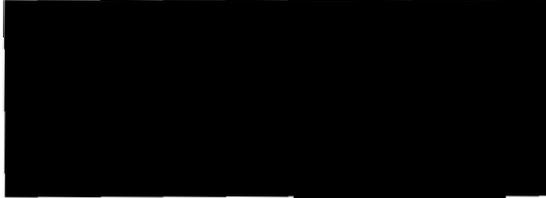




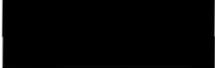
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Office: VERMONT SERVICE CENTER

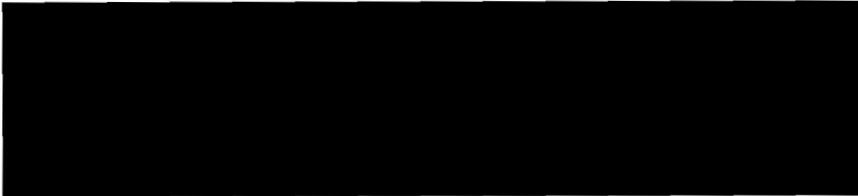
Date: OCT 27 2008

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 Canada who, on December 27, 2004, appeared at the Blaine, Washington Port of Entry. The applicant presented her Canadian passport as a nonimmigrant. The applicant's vehicle was loaded with personal belongings and immigration officers placed her into secondary inspections. The applicant denied prior employment or residence in the United States until she was confronted with documentation of her employment in the United States. The applicant then admitted to her prior employment and returning to a permanent residence in the United States. The applicant also stated that she intended to marry her U.S. citizen fiancé, [REDACTED], and file an application for permanent residency upon her entry into the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of valid entry, travel or identity documents at the time of application for admission. On December 27, 2004, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225(b)(1). The applicant has since remained outside the United States. On January 1, 2005, the applicant married [REDACTED]. On March 9, 2005, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On March 28, 2005, [REDACTED] filed a Petition for Alien Fiancée (Form I-129F). On June 13, 2005, the Form I-130 was approved. On August 5, 2005, the Form I-129F was approved. On February 13, 2006, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 U.S. citizen spouse.

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 October 16, 2007.

On appeal, counsel contends that the director failed to consider several favorable factors in the applicant's case. Counsel also contends that the applicant has only one negative factor and that the positive factors warrant a favorable exercise of discretion. *See Counsel's Brief*, dated November 15, 2007. In support of his contentions, counsel submits only the referenced brief. The entire record was reviewed 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 [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] do not appear to have any children together. The applicant is in her 20's and [REDACTED] is in his 30's.

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

On appeal, counsel asserts that the director failed to consider the favorable relationship of the applicant and [REDACTED]. Counsel asserts that the director failed to consider statements from family members attesting to the applicant's favorable character and her lack of criminal history. Counsel asserts that the applicant and Mr. [REDACTED] have struggled since moving to Canada and that [REDACTED] has found it difficult to obtain employment because he is not a landed immigrant. Counsel asserts that [REDACTED] has been forced to travel between Canada and the United States to be with his family.

The applicant, in her letter, states that she became lifetime friends with [REDACTED] after only a few days together. She states that [REDACTED] flew to Canada two days after she was removed from the United States, proving his devotion to her since he is scared to fly. She states that their only regret regarding their wedding day is that [REDACTED]'s parents were unable to attend. She states that for the first three months of their marriage [REDACTED] commuted from the United States to Canada every weekend, which became stressful and expensive. She states that they missed each other terribly during the week until [REDACTED] decided to join her in Canada. She states that it was a great sacrifice for [REDACTED] to leave behind his home, family and job. She states that [REDACTED] needs to return to the United States where prospects for earning a decent living exist. She states that [REDACTED] does not have healthcare insurance in Canada, which has been costly. She states that they want to start their lives and a family in the United States. She states that they are both good people.

Letters of Support from family members state that [REDACTED]' reaction to the applicant's removal was to immediately go to her side in Canada. They state that the situation has been very hard on both the applicant and [REDACTED]. They state that [REDACTED] has given up an interesting and promising career to be with the applicant. They state that [REDACTED] is not a Canadian citizen or a landed immigrant and cannot find a job that pays well. They state that the applicant and [REDACTED]' living arrangements have been extremely difficult as they have had to live with the applicant's mother. They state that the applicant's family has embraced the applicant and [REDACTED]. They state that they have been struck by the evident love and

affection that the couple have for one another; despite the problems they have shared. They state that the struggle the applicant and [REDACTED] have endured demonstrates their intent to establish a life together.

Medical documentation indicates that [REDACTED] has paid for x-rays, doctors visits, an optical exam, eye lenses and prescriptions for clonazepam and salbutamol, while residing in Canada.

Clearance letters from the State of California's Bureau of Criminal Identification and Information and the Royal Canadian Mounted Police indicate that the applicant does not have a criminal record in their respective jurisdictions.

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 7<sup>th</sup> Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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 the applicant is denied admission, the absence of a criminal record and an approved immigrant visa petition. The AAO notes that the applicant’s marriage and the filing of the immigrant visa petition benefiting her occurred after the applicant was placed into immigration proceedings. These factors are “after-acquired equities” and the AAO accords them diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant’s illegal employment and residence in the United States; and her attempt to conceal her prior employment in the United States.

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 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.