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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: NEW YORK, NEW YORK  
[consolidated therein]

Date:

OCT 28 2008

IN RE: Applicant: [REDACTED]

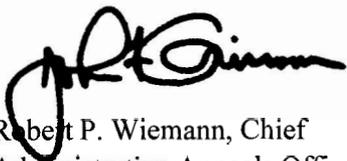
APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 District Director, New York City, New York, 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 initially entered the United States without inspection on May 3, 2000.<sup>1</sup> On May 9, 2000, a Notice to Appear (NTA) was issued against the applicant. On August 21, 2000, an immigration judge ordered the applicant removed *in absentia*.<sup>2</sup> The applicant failed to depart the United States as ordered. On August 21, 2000, a Warrant of Removal/Deportation (Form I-205) was issued against the applicant. On March 25, 2001, the applicant's United States citizen wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-690). On June 8, 2001, the applicant filed a motion to reopen the immigration judge's decision, which the immigration judge denied on August 1, 2001. On September 4, 2001, the applicant filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (Board). On January 25, 2002, the Board dismissed the applicant's appeal. On August 8, 2002, the applicant's Form I-130 was denied. On August 19, 2002, the applicant filed a motion to reopen the Board's decision and an appeal of the Form I-130 denial. On October 24, 2002, the Board denied the applicant's motion to reopen. On January 9, 2003, another Form I-205 was issued against the applicant. On February 13, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On January 27, 2004, the applicant's appeal of the Form I-130 denial was rejected. On February 28, 2005, the applicant's Form I-690 was denied. On June 19, 2006, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On December 27, 2007, the applicant's Form I-212 was denied. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 with his United States citizen wife.

The District Director determined that the applicant is inadmissible to the United States, the unfavorable factors outweigh the favorable factors, and she denied the applicant's Form I-212 accordingly. *District Director's Decision*, dated December 27, 2007.

Section 212(a)(9) of the Act states:

(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

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<sup>1</sup> The AAO notes that the applicant presented himself as a Honduran citizen, named [REDACTED]. The AAO notes that the immigration judge ordered the applicant removed to Honduras.

(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 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 continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's 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, the applicant, through counsel, asserts that "[t]he Service erred in denying the applicant's [Form I-212]. The Service did not consider a great deal of favorable factors in this applicant's case." *Addendum to I-290B*, filed January 8, 2008. Counsel claims that the applicant was never married in the Dominican Republic and the woman "who was arrested at the border and claimed to be [the applicant's] wife lied to the immigration officials and fabricated that information about being married to the applicant." *Id.* The AAO notes that other than counsel's statement, there is no evidence in the record establishing that the woman who claimed to be the applicant's wife when they entered the United States was not the applicant's wife. The assertions of counsel do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 534 n. 2 (BIA 1988). Additionally, the AAO finds that the applicant willfully misrepresented himself as \_\_\_\_\_ when he was apprehended by immigration officers on May 9, 2000, and he was ordered removed under that name, and this is an unfavorable factor. Counsel states the applicant "has been working in the United States and that he has filed several federal income tax returns." *Id.* The AAO notes that the applicant has been working without authorization and that is an unfavorable factor. Additionally, the AAO notes that the applicant has been present in the United States without authorization and that is an unfavorable factor. Counsel states the applicant "has never been arrested.... In other words, the applicant's good moral character in the United States was not considered as part of the determination." *Addendum to I-290B, supra.* Ms. \_\_\_\_\_ states that the applicant and his wife "are [a] good couple and that their relationship is a good one." *Letter from \_\_\_\_\_*, dated January 18, 2005. 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 to a qualifying family member if the application were

denied. The AAO will consider the hardship to the applicant's wife, but it will be just one of the determining factors.

The record of proceeding reveals that on August 21, 2000, an immigration judge ordered the applicant removed from the United States. The applicant failed to depart the United States as ordered, and on August 21, 2000, and January 9, 2003, Warrants of Removal/Deportation (Form I-205) were issued. Based on the applicant's order of removal from the United States, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) 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 (7<sup>th</sup> Cir. 1991), for example, the Seventh Circuit Court of Appeals (Seventh Circuit) reviewed a 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 (7<sup>th</sup> 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 Order to Show Cause (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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (5<sup>th</sup> 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 his United States citizen wife, general hardship she may experience, letters of recommendation, the lack of a criminal record besides his immigration violations, and a history of paying taxes. The AAO notes that the applicant’s marriage to his wife occurred on December 8, 2000, which was after the applicant was ordered removed from the United States, 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, the willful misrepresentation of his identity when he was apprehended by immigration officers, his failure to appear for his removal hearing, his failure to abide by an immigration judge’s order, and his lengthy period of unauthorized presence and employment in the United States.

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 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.