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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

HE

MAY 06 2009

FILE:

[REDACTED]

Office: BALTIMORE, MD

Date:

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)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland 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 March 21, 1990, was apprehended by immigration officers at her place of employment. The applicant testified that she had obtained employment by presenting a fraudulent lawful permanent resident card and social security card to her employer. On March 22, 1990, the applicant was granted voluntary departure. On March 26, 1990, the applicant was returned to Mexico. On March 23, 1993, the applicant was again apprehended by immigration officers at a different place of employment. The applicant was in possession of a social security card and lawful permanent resident card bearing the name [REDACTED]. On the same day the applicant was placed into immigration proceedings for reentering the United States without inspection. On June 16, 1993, the immigration judge granted the applicant voluntary departure until December 16, 1993. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal.¹

On September 9, 1998, a Petition for Alien Worker (Form I-140) was filed on behalf of the applicant's spouse, [REDACTED]. On December 18, 1998, the Form I-140 was approved. On February 12, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), as a derivative beneficiary of the approved Form I-140, indicating that she had reentered the United States without inspection in April 1994. On June 18, 2002, the applicant filed a Form I-212. On January 20, 2004, the Form I-212 was denied. On March 3, 2004, the applicant filed a second Form I-212. On January 20, 2004, the applicant's Form I-485 was denied. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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 now lawful permanent resident spouse and four U.S. citizen children.

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 March 6, 2006.

On appeal, counsel contends that the applicant warrants a favorable exercise of discretion. *See Counsel's Brief*, received May 3, 2006. In support of his contentions, counsel submits the referenced brief, letters from the applicant's family, a psychological evaluation and financial documentation. The entire record was reviewed in rendering a decision in this case.

¹ The AAO notes that counsel and the applicant assert that she complied with voluntary departure; however, the applicant failed to provide evidence that she departed the United States on or before December 16, 1993. In support of this assertion counsel submits a copy of the immigration judge's order with a U.S. Immigration stamp dated December 27, 1993. Counsel asserts that this is what the U.S. Consulate issued the applicant as proof of her compliance with voluntary departure; however, the record reflects that the applicant was provided with a Departure Verification Form (Form G-146) to present to the U.S. Consulate abroad. The record does not contain a completed Form G-146 and the applicant has not submitted a Form G-146, which would have been completed by the U.S. Consulate in Mexico indicating the date on which she departed the United States if she had complied with the order of voluntary departure. The AAO, therefore, finds that the applicant has failed to provide sufficient evidence of her compliance with the order of voluntary departure.

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 native and citizen of Mexico who became a lawful permanent resident in 2000. The applicant and [REDACTED] have an 18-year-old son, a 10-year-old son, a 7-year-old daughter and a 6-year-old daughter who are all U.S. citizens by birth. The applicant and [REDACTED] are in their 40's.

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

On appeal, counsel contends that the district director failed to consider the relationship between the applicant and her permanent resident spouse and U.S. citizen children, indicating her family ties in the United States. Counsel states that the denial of the applicant's Form I-212 would result in hardship to her family. Counsel states that the applicant has been married to her spouse for 15 years and has four U.S. citizen children. Counsel states that the applicant has assumed responsibility for the children's upbringing, as well as for the household chores and errands, while [REDACTED] works and provides the family's economic support. Counsel states that [REDACTED] will find it difficult to care for the children and maintain his income, and his ability to support his children will be severely affected without the applicant's presence in the United States. Counsel states that [REDACTED] has been in the United States since a young age and he is assimilated into the American lifestyle and no

longer feels connected to Mexico. Counsel states that [REDACTED] could not obtain a similarly paying job in Mexico, which would condemn his family to a life of poverty. Counsel states that Mr. [REDACTED] achievements and his further expectations of life will be destroyed if he returns to Mexico with the applicant. Counsel states that [REDACTED] is concerned about depriving his children of a life to which they are entitled as U.S. citizens. Counsel states that the children are not fluent in Spanish. Counsel states that the children have established friendships in the United States and most of their family resides in the United States. Counsel states that if the children accompanied the applicant to Mexico it would be a shocking and devastating experience for them. Counsel states that the children have projects and dreams of pursuing further education in the United States. Counsel states that if the children are deprived of the presence of their mother it would deeply mark their lives. Counsel states that the applicant's children have already experienced separation from their mother on one occasion, which was devastating for them and has left them with anxiety. Counsel states that two of the applicant's children suffer from medical conditions. Counsel states that the applicant's youngest daughter suffers from asthma and the other daughter, at age 4, was exhibiting signs of a learning disability which affects her language skills and will most likely result in referral to a speech pathologist. Counsel states that without their mother's presence the children will find it very difficult to secure appropriate attention. Counsel states that if the children follow the applicant to Mexico they will be denied access to appropriate healthcare and therapies.

[REDACTED], in a letter accompanying the appeal, states that he wishes for his wife to remain in the United States. He states that they have been married for 15 years and have four U.S. citizen children. He states that the applicant is his support and motivation to work. He states that they both work hard to provide their children with a better life. He states that they have bought a house. He states that his children will suffer if separated from their mother.

The applicant, in a letter accompanying the Form I-212, states that hers is a close family who spends a lot of time together. She states that her primary responsibility is to care for the children, the household and her spouse. She states that her spouse is a construction worker and often comes home very tired. She states that her spouse is not able to care for the children, but is an important part of their lives. She states that if she has to return to Mexico, life for her children, spouse and herself will be very difficult, if not impossible. She states that she cannot afford to take the children with her and her husband is unable to work and provide the care that the children require. She states that she has never been arrested.

A letter from the applicant's oldest child states that the applicant tries hard to provide him with a better life because, in Mexico, they would not have the advantages available in the United States. He states that he will not have a good life in Mexico because he would not be comfortable living in a new place and doing new things. He states that his education will not be the same. He states that the applicant is a hard worker who will not let her family down. He states that if he stays in the United States he will have a good career and own his own business.

Letters from the applicant's children's schools indicate that the applicant's three oldest children are enrolled in and are attending school. These letters do not indicate that any of the children have any learning disabilities or difficulties in school.

A letter written by [REDACTED], a psychiatrist, states that the applicant reported that she has a history of struggles with anxiety and depression related to the uncertainty of her immigration status. The applicant complained of sad and anxious mood, decreased sleep, frequent crying spells and the sense of gloom falling onto her and her family. [REDACTED] indicates that the hardship of a deportation on the applicant would have devastating effects on "[REDACTED] who already suffered separation anxiety, and mainly on [REDACTED] who fell apart, when the applicant left the first time in "1003." [REDACTED] reports that [REDACTED]" who was three at the time of the applicant's first removal, suffered very regressive symptoms and has been scarred by the traumatic separation, as he had difficulties in leaving the house or engaging in activities outside the family circle. [REDACTED] states that the anxiety over the applicant's possible removal has not spared one member of the family. She states that the applicant's oldest daughter needs the applicant's presence to secure adequate services for a learning disability. She states that the applicant's youngest daughter suffers from asthma and the applicant needs to take her for frequent check ups to adjust her medications. [REDACTED] concludes that the applicant and her immediate family members will suffer extreme anxiety symptoms and many of them will not be able to recover from the loss of a parent during their growing years, which is the highest predictor for anxiety and depression in adult life. In that [REDACTED] findings appear to be based on a single interview with the applicant and incorrectly refer to the applicant's son as [REDACTED] and not [REDACTED] (the applicant's son's given name) and her removal year as 1003 and not 1993, the AAO does not find them to reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional. As a result, the evaluation's conclusions must be considered speculative and of diminished value to a finding of hardship. The AAO notes that counsel provided no evidence that the applicant continues to require treatment for depression or that she has received treatment at any point since [REDACTED] diagnosis. Additionally, while the applicant reported to [REDACTED] that she, her son and spouse suffered psychological problems in the past, there is no evidence to establish these claims. Finally, while the applicant reported to [REDACTED] that her daughters suffered from a medical condition and a learning disability, there is no evidence to establish these claims. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record contains a Deed indicating that [REDACTED] owns the property at which he, the applicant and their children reside. The record contains evidence that [REDACTED] and the applicant filed joint taxes in 1999, and from 2003 through 2005.

The record reflects that the applicant has been employed in the United States from 1990 until at least 1993. The applicant was issued employment authorization in the United States from July 2, 1993, until December 16, 1993, from March 17, 1999 until March 16, 2001, from January 12, 2002 until January 11, 2002, from March 1, 2003 until February 29, 2004, from April 16, 2004 until April 15, 2005 and from December 12, 2005 until August 11, 2006.

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. *Supra*.

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 lawful permanent resident spouse, her four U.S. citizen children, the general hardship to her family if she were denied admission to the United States, her otherwise clear background, her filing of joint taxes and the approved immigrant visa petition on which she is a derivative applicant. The AAO notes that the applicant's spouse's adjustment of status to that of lawful permanent resident, the births of her three youngest children and the filing of the immigrant visa petition occurred after the applicant was placed into immigration proceedings. They are, therefore, "after-acquired equities," to which the AAO accords diminished weight.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; her use of fraudulent documentation to obtain employment in the United States; her illegal reentry into the United States after being granted voluntary departure; her use of fraudulent documentation to obtain further employment in the United States; her failure to comply with an order of voluntary departure; her failure to comply with an order of removal; her illegal reentry after having departed the United States while an order of removal was outstanding; her extended unlawful presence in the United States; and her unauthorized employment in the United States except for dates on which she was granted employment authorization.

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.