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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

PUBLIC COPY

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FILE:

[REDACTED]

Office: NEW YORK, NY

Date:

OCT 08 2010

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:

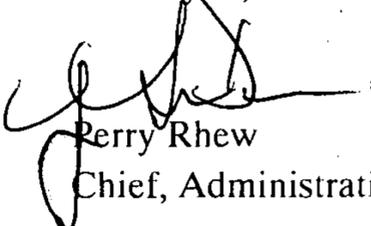
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, 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 Ecuador whose lawful permanent resident father, on September 11, 1996, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, indicating that the applicant resided in the United States. On October 22, 1996, the Form I-130 was approved. On October 27, 1997, immigration officers apprehended the applicant. The applicant failed to provide her true identity to immigration officers. On October 28, 1997, the applicant was placed into immigration proceedings for having entered the United States without inspection on October 25, 1997 under the name [REDACTED] and nationality of Mexican. On December 11, 1997, the immigration judge granted the applicant voluntary departure until December 26, 1997 under the name [REDACTED] and nationality of Mexican. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal.

On October 5, 1999, the applicant filed a Form I-212 indicating that she continued to reside in the United States. On December 23, 1999, the Form I-212 was denied. The applicant filed an appeal with the AAO. On June 15, 2000, the AAO dismissed the applicant's appeal.

On November 8, 2006, the applicant married [REDACTED] a naturalized U.S. citizen, in [REDACTED]. On July 26, 2007, [REDACTED] filed a Form I-130 on behalf of the applicant. On August 26, 2007, the applicant filed the Form I-212, indicating that she resided in the United States. On April 25, 2008, the Form I-130 was approved. The applicant is inadmissible pursuant to 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 naturalized U.S. citizen spouse, lawful permanent resident father and three 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 January 7, 2009.

On appeal, counsel contends that the applicant has shown that the favorable equities in her case outweigh the unfavorable and she merits a favorable exercise of discretion. *See Counsel's Brief*, undated. In support of his contentions, counsel submits the referenced brief, an affidavit from the applicant's spouse, identity documentation for the applicant's father, medical documentation, country condition reports, letters of recommendation and a clearance letter. 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 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 contiguous territory, the Secretary has consented to the alien's reapplying for admission.

Counsel contends that the district director failed to consider the applicant's age at the time of her removal proceedings as an essential factor in evaluating the favorable factors and her failure to comply with an order of voluntary departure. Counsel contends that the applicant was not in a position to make an intelligent, deliberate or willful decision in regard to any legal proceedings and it would be unfair to impute any violation of the law committed by others since she was not of legal age at the time of her removal proceedings and had to rely upon the advice of her attorney and father. The AAO notes that, at the time the applicant was apprehended she provided a false identity and date of birth to immigration officers indicating that she was not a minor and was a national and citizen of Mexico. The record reflects that neither the applicant's father nor attorney made the decision to initially claim Mexican nationality and alter the applicant's name and date of birth. The applicant was not apprehended with any family members and indicated she was not a minor and was, therefore, not afforded counsel at the time she was interviewed in regard to her initial intake; however, counsel was present at her immigration hearing. While the record reflects that the applicant was actually only less than 3 months shy of her eighteenth birthday at the time she was apprehended, the AAO finds that the decision to provide a false identity to immigration officers at the time she was apprehended was the sole decision of the applicant and such a decision cannot be ameliorated by the fact she was later advised by another to continue to provide false information to immigration authorities. The AAO finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining immigration benefits, specifically voluntary departure, by fraud. The AAO notes that, even though the applicant was technically a minor at the time she was apprehended, the applicant was sufficiently old and independent enough to be found

inadmissible for willful misrepresentation of a material fact.

The record reflects that [REDACTED] is a native and citizen of Ecuador who became a lawful permanent resident in 1995 and a naturalized U.S. citizen in 2002. The applicant has an eleven-year-old daughter and an eight-year-old son from a prior relationship who are both U.S. citizens by birth. The applicant and [REDACTED] have a four-year-old daughter who is a U.S. citizen by birth. The applicant's father is a native and citizen of Ecuador who became a lawful permanent resident in 1989. The applicant is in her 30's and [REDACTED] is in his 20's.

Counsel contends that the district director failed to consider all of the equities presented for her review and consideration. Counsel contends that the applicant is a person of good moral character who has never been arrested for or convicted of any crimes during her residency in the United States. Counsel contends that the district director failed to consider the hardship to the applicant's family members if she were removed from the United States. Counsel contends that the applicant's admission to the United States is not contrary to the national welfare, safety and security of the United States. Counsel contends that the government's enforcement goals are outweighed by the government's goal to preserve family unity. Counsel contends that the applicant is not a threat to national security and barring her from admission would not make the United States any safer. Counsel contends that to bar the applicant from admission would, however, destroy the family unit and cause hardship to her U.S. citizen spouse and children.

Counsel states that the applicant has other family ties in the United States besides her lawful permanent resident father. Counsel states that the applicant has a U.S. citizen spouse and three U.S. citizen children who will suffer emotional and physical hardship if she was absent from the United States. Counsel states that [REDACTED]'s debilitating condition, which among other things limits his range of mobility and his ability to pick up weights heavier than 20 pounds, poses a serious hardship. Counsel states that [REDACTED] could not perform the daily tasks required to supervise his children and it would be dangerous to require [REDACTED] to supervise the children alone in case of an emergency since [REDACTED] could not lift his children and run for safety. Counsel states that the applicant is a stay-at-home mother who takes care of the children and household chores which require constant movement and lifting. Counsel states that the applicant's presence in the household is extremely necessary for the family. Counsel states that the applicant's children have resided in the United States since birth and are completely integrated into the American lifestyle. Counsel states that uprooting the children at this stage in their education and social development to survive in a small town in the highlands of Ecuador would be a hardship. Counsel states that the applicant's removal from the United States would be extremely devastating to the family. Counsel states that if [REDACTED] and the children accompany the applicant to Ecuador they would find a country that the U.S. State Department has deemed to suffer from severe violence and political demonstrations which can disrupt traffic and can turn violent. Counsel states that the applicant's children have not known an environment outside the United States and are accustomed to urban American living and culture where police protection and other emergency services are available. Counsel states that the applicant's family will suffer extreme stress by being forced to live in an environment in which they would not be able to rely upon police to help them if they are a victim of crime. Counsel states that Ecuador has 19 potentially active volcanoes, a situation which is totally foreign to the applicant's children. Counsel states that the family is also concerned about healthcare in Ecuador, drunk drivers on weekends and holidays, and notes an advisement by the U.S. Embassy to avoid driving on all but the most traveled highways in frontier regions. Counsel states that the U.S. State Department

assessment does not bode well for [REDACTED]'s delicate situation regarding his spine, which will keep him dependent on reliable health care and medication, which he will not find in Ecuador or will find to be a considerable expense. Counsel states that, in addition to crime, lack of health facilities and conditions and the recurrence of natural disasters, the family will have to face a severe financial impact due to the separation of the applicant from the rest of her family. Counsel states that, according to the CIA's World Factbook Report the unemployment rate is 9.8% and 38.3% of the population lives below the poverty line. Counsel states that it is very unlikely that the applicant and [REDACTED] will be able to find employment sufficient to provide for and meet the basic needs of the family and the same needs which they are able to meet in the United States. Counsel states that [REDACTED] believes that if the applicant is not permitted to remain in the United States his family will suffer irreparable financial hardship and will never be able to obtain the standard of living that they currently have in the United States. Counsel states that, if the applicant returned to Ecuador, [REDACTED] would have to hire someone to care for the everyday household duties and the children, as well as someone to care for him when he is ill. Counsel states that separation from the applicant would be devastating to [REDACTED] because he depends on her physically and emotionally. Counsel states that [REDACTED] relies on the applicant to give him therapy at home to alleviate his pain and her daily presence as a wife is essential to the healthy development of the marriage. Counsel states that [REDACTED] looks to the applicant for love, support, encouragement, companionship and overall care of his medical problems. Counsel states that the applicant has resided in the United States for almost 13 years and has been nothing but a responsible person, a good wife and mother.

[REDACTED] in his affidavit accompanying the appeal, states that he will suffer physical and psychological hardships if the applicant is removed from the United States and not permitted to be with their U.S. born children. He states that he was diagnosed with two herniated discs when he was sixteen years old and had an operation in 2006 which alleviated, in part, his back pain and mobility. He states that, due to his herniated discs, routine things in his life are limited. He states that he cannot lift weights more than 20 pounds, he gets tired very easily and cannot walk long distances and he cannot run without feeling pain later on. He states that this means that he cannot do household chores, laundry, or fix anything that requires lifting or doing things that require strength. He states that, due to his condition, it is very hard for him to care for his children by himself. He states that the applicant has to dress the children and accompany him to things such as shopping because she is the one who can carry the heavy objects. He states that he cannot bend his back. He states that his children are very active and he is grateful for the applicant because he cannot run after or pickup his children. He states that, as a matter of safety, the applicant is necessary to be with the family in case of an emergency because he could not carry any of the children out of the house if there was a fire. He states that when he had his operation the applicant was extremely helpful in his recovery. He states that the applicant offered him comfort and helped him to get in and out of bed, go to the bathroom and to do all of his daily necessities. He states that the applicant helped him with his therapy and would put hot compresses on his back. He states that the applicant continues to do that and gives him massages and hot compresses. He states that the applicant is his rock and that without her he would have been desperate with his health situation and the raising of the children. He states that just thinking of the applicant's removal from the United States gives him nightmares. He states that he was told some years ago that he will require another operation when his back pain becomes intolerable and that could be at any time. He states that if he is to be alone with his children he may get himself into a situation in which he will be forced to physically suffer. He states that he cannot do without his wife to care for the children. He states that he cannot do without the applicant's emotional and physical support. He states that the applicant has never been arrested for

any crime. He states that the applicant is a great mother to the children. He states that the children are in their formative years and they will suffer a shock if the applicant is removed from the United States. He states that the children are American and that their destinies are not in Canar, Ecuador. He states that the family does not own any house or land in Ecuador. He states that he works as a taxi driver in the United States which is a convenience because of his health condition. He states that, in Ecuador his wife does not have anything and that people over the age of thirty are considered old and are unable to obtain employment. He states that the applicant will be condemned to poverty in Ecuador.

The applicant, in her affidavit accompanying the Form I-212, states that she entered the United States around September 1997 and ended up in a house in Houston, Texas. She states that approximately two days later she and twenty other people were detained by immigration officers at the house. She states that when she was asked her name and nationality she gave immigration officers a different name and nationality. She states that she was told by the coyotes to provide an alternate name and the nationality of Mexican if she was apprehended. She states that she did not know any better and that is why she provided a fraudulent identity to immigration officers.

A letter from [REDACTED] dated February 2, 2010, indicates that [REDACTED] was under his professional care from September 2005 through March 2006 with chief complaints of lumbar weakness, limitation of movement, right lower extremity numbness and tingling sensation especially on the right ankle and sole of the foot. [REDACTED] states that [REDACTED] was referred to [REDACTED] after his surgery of the lumbar 4/5 disc herniation. [REDACTED] states that [REDACTED] went to physical therapy at Grace Physical Therapy Clinic.

A letter from [REDACTED] dated April 16, 2008, indicates that [REDACTED] was seen in his office from March 16, 2006 until August 7, 2006 following surgery for decompression and disectomy of the L4- L5 on March 8, 2006. He states that, at that time, his range of motion, mobility and ability to lift more than 20 pounds were all limited. He states that [REDACTED] had continued pain throughout the time period of his care in his office, but at no time did he show any compromise of nerves and he never had a compromised straight leg raise test. He states that the applicant was last seen in his office on August 7, 2006.

A letter from [REDACTED] dated March 28, 2006, indicates that [REDACTED]'s chief complaints were a limitation of lumbar movement, lumbar weakness and right lower extremity numbness and tingling sensation. It states that these conditions occurred after [REDACTED] received the surgery of the lumbar disc herniation on March 8, 2006. It indicates that [REDACTED]'s low back pain subsided after surgery; however he gets more numbness when he stands up and walks for more than ten minutes, he is having difficulty bending, difficulty turning his back side to side and carrying/lifting heavy objects, walking, standing for long periods of time, going up and down stairs and standing up from the chair or from the floor. It states that the short term goals of physical therapy are to decrease pain, decreased tenderness on paraspinal lumbar and numbness on the right lower extremity, increase range of motion and increase strength. It states that the long-term goals of physical therapy are for functional pain free, decreased tenderness, normal muscle strength and normal range of motion. It states that the physical treatment plan includes manual therapy, therapeutic exercise, massage, hot packs, ultrasound, electrical stimulation and home exercise for a period of three times a week for eight weeks.

The record contains a pschoemotional, marital and family dynamics assessment, dated July 15, 2009, for the family written by [REDACTED] Licensed Mental Health Counselor and Fellow-Diplomate, American Psychotherapy Association, which is based on a single interview with [REDACTED]. It states that the two older children attend school while the younger child remains at home with the applicant. It states that the children have met all of their developmental milestones age-appropriately and are in good physical condition. It states that the applicant is the children's primary caretaker while [REDACTED] has become the functional father for the two oldest children and is the sole economic provider for the home. It states that [REDACTED] indicated that he feels extremely worried about the possibility of the applicant having to leave him and the children. [REDACTED] reported that he continues pain medication, physical therapy and eventually waiting for a second operation. [REDACTED] reported that the serious immigration problem the applicant has is affecting them tremendously, both carrying multiple symptoms of anxiety, mental worries and depressed mood. [REDACTED] reported that he has reflected on a number of reasons why he and the children accompanying the applicant to Ecuador would be highly traumatic for all of them, including that they do not have a home of their own, the three children were born in the United States and are being raised with English as their primary language and within American cultural standards, and that his driving job and work-related contacts are also in the United States. [REDACTED] reported his parents and siblings are all U.S. citizens and reside in the area. [REDACTED] reported that the Ecuadorian economy and standard of living is chronically affected by widespread poverty, joblessness and by growing social and political unrest. [REDACTED] reported that the levels of public insecurity and violence continue to rise in Ecuador amidst widespread street theft, robberies, burglaries, criminal assaults, not to mention aggravated political, guerilla- and drug-related violence. [REDACTED] reported that Ecuador's educational and health systems are deficient.

[REDACTED] has developed a clinically significant anxious-depressive Adjustment Disorder as a rational, emotive and somatic reaction to the applicant's lingering immigration status and potential removal. He opines that the perspective traumatic removal of the applicant and mother of three affects the family life tremendously as it would imply either their relocation to Ecuador or a hardship scenario of [REDACTED] being alone to care for his children and home without the applicant's essential presence and day-to-day support. He opines that asking the family to accept such a radical change in their daily living would have very serious consequences for all involved, aggravated by the fact the that children's early years are, per se, ones of emotional instability, fragility and personal insecurity. He states that there is an abundance of clinical evidence about the emergence of major mood disturbances, conduct and/or adjustment disorders and even schizo-affective disorders stemming from exposure to traumatizing events, radical changes in one's lifestyle, the death or sudden separation from a loved one, or unusual economic or emotional hardship. He opines that, as the chances of extreme emotional hardship are elevated for [REDACTED] and the children, the applicant's application should be approved.

[REDACTED] does not indicate that the applicant, [REDACTED] or the children suffer from a psychological diagnosis that requires continued treatment or counseling or that [REDACTED] and the children would be unable to receive appropriate counseling and treatment in the absence of the applicant. In that [REDACTED] findings appear to be based on a single interview with the family, 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.

Furthermore, the AAO notes that there is no evidence in the record to establish that [REDACTED] continues to receive or require treatment for his lumbar problem or currently has limited function. The AAO also notes that there is no evidence that [REDACTED] would be unable to receive appropriate care in the absence of the applicant for any medical conditions or that he would be unable to receive appropriate care in Ecuador. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 copies of the U.S. State Department Ecuador Country Specific Information and the World Factbook page for Ecuador. The country condition reports indicate that violent crime is on the rise in Ecuador, that Ecuador has a high level of unemployment, and that educational and health services outside of large cities are insufficient; however, there is no evidence in the record to establish that the applicant's family would be subject to the criminal element of Ecuador, would be unable to earn sufficient income or be unable to obtain appropriate educational or health services. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

A letter from the parent coordinator for the [REDACTED] indicates that the applicant is an active parent volunteer at the school. It states that the applicant is always in attendance at all school events and meetings. It states that the applicant volunteers in the school cafeteria and works well with the school parent coordinator, helping out when necessary. It states that the applicant shows great parenting skills when she attends school trips with classes. It states that the applicant has proven to be trustworthy and reliable. It states that the applicant is appreciated for all that she does for the students and the school.

School records indicate that the applicant's children are enrolled in school and are performing well.

A letter from [REDACTED] indicates that the applicant is a registered parishioner and is in good standing. It states that the applicant comes to church on a regular basis and is a person of good moral character.

A recommendation letter indicates that the applicant is a decent, honest and hard-working person. It states that most important of all is the applicant's strong sense of fairness.

A Good Conduct Certificate from the City of New York indicates that the applicant does not have a criminal record.

The record reflects that the applicant filed joint taxes in 2007 and 2008. The applicant claims that she has never been employed in the United States.

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 a discretionary determination. 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 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.

As established by the record, the favorable factors in this matter are the applicant's lawful permanent resident father, naturalized U.S. citizen spouse, three U.S. citizen children, the general hardship to the applicant and her family if she were denied admission to the United States, her age at the time of apprehension, the absence of a criminal record, filing of joint tax returns and the approved immigrant visa petition filed on her behalf. The AAO notes that the applicant's marriage and the

birth of the applicant's children 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 unlawful entry into the United States; her failure to provide her true identity to immigration officers or the immigration court; her inadmissibility under section 212(a)(6)(C)(i)(I) of the Act; her failure to comply with voluntary departure; her failure to comply with a removal order; and her unlawful presence 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.