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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



H4

[REDACTED]

FILE: [REDACTED]

Office: SAN DIEGO, CA

Date: FEB 22 2011

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, with a fee of \$630. 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,

Jerry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, San Diego, California, 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 April 1, 1994, filed a Request for Asylum in the United States (Form I-589), indicating that she entered the United States without inspection in January 1988.

On September 12, 1994, the applicant appeared at the Dallas/Fort Worth, International Airport. The applicant presented her Mexican passport containing a counterfeit permanent resident stamp. The applicant was given deferred inspection. On September 26, 1994, the applicant admitted that she had paid for the counterfeit stamp and did not have valid documentation to enter the United States. The applicant was permitted to withdraw her application for admission and was returned to Mexico.

On January 31, 1995, the Form I-589 was denied and the applicant was placed into immigration proceedings. On October 24, 1996, the applicant withdrew her applications for asylum and withholding of removal and the immigration judge denied her applications for suspension and voluntary departure. The immigration judge ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On August 19, 1997, the BIA dismissed the applicant's appeal. The applicant failed to depart the United States.

On February 4, 1998, the applicant married her then lawful permanent resident spouse. On May 4, 1998, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant.

On August 1, 1999, the applicant appeared at the San Ysidro, California port of entry. The applicant orally claimed to be a naturalized U.S. citizen. The applicant was placed into secondary inspection. The applicant admitted that she had claimed to be a naturalized U.S. citizen, that she did not have any claim to U.S. citizenship and that she did not have valid documentation to enter the United States. The applicant admitted that she had been previously ordered removed. The applicant admitted that she had resided in the United States for ten years and had returned to Mexico three weeks prior to the date on which she sought entry as a U.S. citizen. The applicant admitted that she planned to return to the United States to resume her residence and employment. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182(a)(7)(A)(i)(I), for making a false claim to U.S. citizenship and for being an immigrant without valid documentation. On August 2, 1999, 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).

On August 1, 2002, the Form I-130 was approved. On October 29, 2007, the applicant filed the Form I-212 indicating that she resided in the United States. 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) for a period of twenty years. 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 naturalized U.S. citizen spouse and one U.S. citizen child.

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 October 6, 2009.

On appeal, counsel contends that the applicant warrants a favorable exercise of discretion. *See Counsel's Brief*, dated December 3, 2009. In support of his contentions, counsel submits the referenced brief, declarations and letters, financial and medical documentation, and copies of documentation already in the record. 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. [emphasis added]

....

(C) Aliens unlawfully present after previous immigration violations.-

- (i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver

The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

Counsel contends that: the applicant was only ordered removed for merely not having valid documentation and then was issued an expedited removal order when attempting to reenter the United States; the applicant was not removed for alien smuggling, drug trafficking or other criminal conduct; the removal in the applicant's case occurred more than ten years ago and she has not had any problems since; the applicant has resided in the United States since 1988; the applicant has never been convicted of any criminal offense, has never been arrested and has done her best to support her family; the applicant has not been in trouble with the law outside her removal orders; the applicant has had a clean immigration record since 1999; the applicant has the responsibility of caring for both a schizophrenic husband and a 12-year-old daughter; the applicant has supported her family physically, financially and emotionally; the applicant is the beneficiary of an approved Form I-130 filed by her U.S. citizen husband and she is eligible for adjustment under section 245(i) of the Act; but for the applicant's mother's illness and death, the applicant would not have departed the United States since her entry in 1988; the Mexican economy is in a recession and the applicant would be unable to obtain employment in Mexico and her family would be unable to continue their education and would have to help the applicant pay for basic necessities; Mexico also suffers from sickening violence as the government battles armies of drug traffickers; the applicant faces starvation and violent death in Mexico; the applicant's daughter and spouse will be unable to care for themselves without the applicant's presence; and the applicant's husband turns violent when he does not take his medication.

The AAO notes that the applicant was previously married to a lawful permanent resident, [REDACTED] and the record does not contain evidence that the applicant's marriage to [REDACTED] was legally terminated through death or divorce. The applicant's marriage certificate to her current spouse reflects that she was not previously married; however, for the purposes of this decision the AAO will consider the applicant to be legally married to her current spouse. The record reflects that the applicant's spouse is a native of Cuba who became a lawful permanent resident in 1980 and a naturalized U.S. citizen in 1999. The applicant and her spouse have a 13-year-old daughter who is a U.S. citizen by birth.

A declaration from the applicant indicates that the applicant has resided in the United States since 1988, has never been arrested, she is a good mother, a person of good moral character, she supports her family, and that she should be permitted to remain in the United States. She indicates that her spouse suffers from schizophrenia and is disabled. She indicates that her daughter enjoys good physical health but suffers from stress and nervousness.

Letters of recommendation from the applicant's friends and family, including her spouse and daughter, indicate that the applicant has resided in the United States for an extended period of time, is a good mother, a person of good moral character, and should be permitted to remain in the United States. They indicate that the applicant's daughter will suffer if the applicant is not permitted to remain in the United States. They indicate that the applicant's presence is required in the United States to care for her daughter and husband.

Social Security Administration documentation indicates that the applicant's spouse received payments for disability in 2003.

Medical records, most recently dated in 2007, indicate that the applicant's spouse has been under psychiatric care since 1990 and suffers from chronic schizoaffective disorder, depressed. They indicate that the applicant's spouse has been hospitalized multiple times since childhood and is seen on a regular outpatient basis with a number of psychotropic medication prescriptions that are effective in keeping him stable. They indicate that the applicant's spouse becomes confused and forgetful, has mood swings, is irritable and loses his temper, professes not to associate with other people, and is troubled by grandiose hallucinations. The applicant's spouse's psychiatrist indicates that the applicant's removal from the United States would be enormously detrimental to his patient's mental health and he depends on his wife heavily for assistance with medications, keeping appointments, caring for their child, grocery shopping, cooking and housework.

The record reflects that the applicant filed taxes and joint taxes in 1994, 2002 through 2004 and 2006 through 2008. The record reflects that the applicant has been employed in the United States since at least 1993. The record reflects that the applicant has only been issued employment authorization from February 15, 1997 through February 14, 1998.

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 a discretionary determination. 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 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 naturalized U.S. citizen spouse, her U.S. citizen child, the general hardship to the applicant and her family if she were denied admission to the United States, the applicant's spouse's schizophrenic diagnosis and treatment, the absence of a criminal record, the filing of federal taxes and the approved immigrant visa petition filed on her behalf. The AAO notes that the applicant's marriage, birth of her child and the filing of the immigrant visa petition benefiting her occurred after the applicant was placed into immigration proceedings. They are, therefore, "after-acquired equities," to which the AAO accords diminished weight.

The unfavorable factors in this case include the applicant's original unlawful entry into the United States; her attempt to enter the United States by fraud; her inadmissibility under section 212(a)(6)(C)(i) of the Act; her second unlawful entry into the United States after being permitted to withdraw her application for admission; her failure to comply with an order of removal; her attempt to enter the United States by making a false claim to U.S. citizenship; her inadmissibility under section 212(a)(6)(C)(ii) of the Act; her unlawful reentry into the United States after having been removed; her inadmissibility under section 212(a)(9)(C) of the Act; her unlawful presence in the United States; and her unauthorized employment in the United States except for periods of work authorization.

The applicant in the instant case has multiple immigration violations and a permanent ground of inadmissibility. The AAO notes that the applicant's favorable factors are extensive in light of her spouse's mental health issues; however, the applicant is unable to overcome her permanent ground of inadmissibility under any circumstances since there is no waiver available to her. As such, 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.

Beyond the decision of the district director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(6)(C)(ii) of the Act and no waiver is available. Therefore, the applicant is mandatorily inadmissible to the United States and no purpose would be served in the favorable exercise of discretion in adjudicating an application to reapply for admission into the United States. The AAO also finds that the applicant is inadmissible under the provisions of section 212(a)(9)(C)(i)(II) of the Act and does not qualify for a waiver or the exception under section 212(a)(9)(C)(ii) and (iii) of the Act. Therefore, the applicant is statutorily ineligible to apply for permission to reapply for admission into the United States.<sup>1</sup>

**ORDER:** The appeal is dismissed.