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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

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FILE: [REDACTED] Office: LOS ANGELES, CA

Date:

JAN 24 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:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, 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 February 22, 1998, appeared at the San Ysidro, California port of entry. The applicant presented a counterfeit lawful permanent resident card bearing the name [REDACTED]. The applicant was placed into secondary inspection. The applicant admitted that the document was fraudulent and that she did not have valid documentation to enter the United States. The applicant admitted that she had resided in the United States for the past 2 years. The applicant failed to provide her true identity to immigration officers by providing an alternate name and date of birth. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to enter the United States by fraud and for being an immigrant without valid documentation. On February 25, 1998, 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) under the name [REDACTED].

On December 13, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on her behalf by her naturalized U.S. citizen spouse, [REDACTED]. On September 19, 2002, the Form I-485 was denied. On December 23, 2005, the applicant filed a second Form I-485. On the same day, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212 indicating that she continued to reside in the United States. On July 29, 2009, the Form I-485 and the Form I-601 were denied. The applicant is inadmissible under 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 naturalized U.S. citizen spouse, three U.S. citizen children, one U.S. citizen adult stepchild and two naturalized U.S. citizen adult stepchildren.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated July 29, 2009.

On appeal, counsel contends that the field office director failed to consider the hardship to the applicant's family members. *See Counsel's Brief*, dated September 22, 2009. In support of her contentions, counsel submits the referenced brief 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.

....

(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.

The record reflects that Mr. [REDACTED] is a native of Mexico who became a lawful permanent resident in 1992 and a naturalized U.S. citizen in 2001. The applicant and Mr. [REDACTED] have a 14-year-old son, a 9-year-old son and a 7-year-old daughter who are U.S. citizens by birth. Mr. [REDACTED] has a 27-year-old daughter and a 25-year-old son from a previous relationship who are natives of Mexico who became lawful permanent residents in 1992 and naturalized U.S. citizens in 2003. Mr. [REDACTED] has a 19-year-old son from a prior relationship who is a U.S. citizen by birth. The applicant is in her 30's and Mr. [REDACTED] is in his 50's.

The record contains affidavits from the applicant and Mr. [REDACTED] attesting to the applicant's good moral character, extensive family ties in the United States and the need for the applicant's presence in the United States.

The record contains letters from the applicant's children, teachers and friends attesting to the applicant's good moral character, extensive family ties in the United States and the need for her presence in the United States.

The record reflects that the applicant has not been employed in the United States. The record reflects that the applicant has filed joint federal taxes from 2001 through 2004.

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 naturalized U.S. citizen spouse; her three U.S. citizen children; her two naturalized U.S. citizen adult stepchildren; her U.S. citizen adult stepchild; the general hardship to the applicant and her family if she were denied admission to the United States; the absence of a criminal record; and the approved immigrant visa petition filed on her behalf. The AAO notes that the birth of the applicant's two youngest children 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 illegal entry into the United States; her unauthorized presence in the United States; her attempt to gain admission to the United States by fraud; her inadmissibility under section 212(a)(6)(C)(i) 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; 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.

Beyond the decision of the field office director, the AAO 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, no purpose would be served in the favorable exercise of discretion in adjudicating an application to reapply for admission into the United States.¹

ORDER: The appeal is dismissed.

¹ The AAO conducts appellate review on a *de novo* basis *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).