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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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**U.S. Citizenship  
and Immigration  
Services**



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Date: **NOV 29 2011** Office: LAS VEGAS, NEVADA

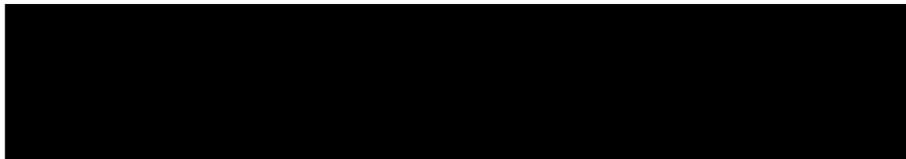
FILE: 

IN RE:

Applicant: 

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.

Thank you,

Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Las Vegas, Nevada, 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 sustained.

The record reflects that the applicant is a native and citizen of Mexico who was ordered removed on January 24, 2002, and departed the United States before her consular interview in Ciudad Juarez, Mexico on July 20, 2010. 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 rejoin her U.S. Citizen father, sister, and lawful permanent resident mother in the United States.

The Field Office Director determined the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated June 17, 2011.

On appeal counsel for the applicant submits a brief in support of appeal. *Brief in support of appeal*, July 15, 2011. Therein, counsel asserts the favorable factors in the present case outweigh the unfavorable factors, and the applicant merits a favorable exercise of discretion. *Id.*

The record contains briefs in support of the I-212 application, statements from the applicant and the applicant's family, a psychological evaluation, evidence of birth, marriage, permanent residence, and naturalization, documentation from schools, evidence and transcripts of removal proceedings, financial information, automobile information and billing statements. All evidence was reviewed and considered upon rendering a decision on appeal.

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.

The record reflects that the applicant was born in Mexico on February 4, 1992, and entered the United States without inspection on March 3, 1992, when she was approximately four weeks old. The applicant and her parents were placed in removal proceedings on December 5, 2000. The applicant's parents, [REDACTED] and [REDACTED] were granted cancellation of removal; however, because the applicant was only nine years old, she did not have the requisite ten years of physical presence for cancellation and was ordered removed on January 24, 2002. *See Order of Immigration Judge, January 24, 2002.* The applicant remained in the United States until she departed for her consular interview in Ciudad Juarez, Mexico, which was scheduled on July 20, 2010. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The record further reflects that the applicant has a U.S. Citizen father and a sister. The father states his daughter's situation has turned his life into a "nightmare." *Letter from [REDACTED] August 9, 2010.* The record contains a psychological evaluation from licensed social worker [REDACTED]. Therein, [REDACTED] opines, after an interview with the applicant's father: "the present legal matters and separation of these family members constitute a severe hardship for all members involved... I also strongly recommend that she and [her] family seek therapy to address the rather traumatic emotional disruption to her personally, as well as to other family members." *Letter from [REDACTED] July 17, 2010.* The applicant's mother states she has had "pani[c] attacks" as well as "sleeping problems" because of worry due to leaving her daughter in Mexico. *Letter from [REDACTED] August 9, 2010.* The applicant's sister explains the applicant's role in her upbringing: "Ever since I was born my sister was always [there] for me... my sister when I started to grow up she taught... me how to spell, read, and write everything." *Letter from [REDACTED] undated.* The record also contains numerous certificates and awards related to the applicant's education. *See school documents.* Moreover, the applicant submits earning and billing statements as evidence of the family's financial situation. *See financial documents.* The record further reflects the applicant has

no criminal history. The applicant contends she volunteered in high school, and was an athlete as well. *Letter from the applicant*, July 8, 2010.

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.

The applicant entered the United States with her mother when she was only 4 weeks old, and she was ordered removed when she was only nine years old. Although the applicant’s parents were granted cancellation of removal, the applicant’s age barred her from such relief. The applicant has lived the majority of her life in the United States, has performed well academically, assists her family, and has no criminal record. The Field Office Director cites the applicant’s length of time present in the United States after she was ordered removed as an unfavorable factor. *See decision of Field Office Director*, June 17, 2011. The AAO again notes that a record of immigration violations alone do not conclusively support a finding of a lack of good moral character. *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978). Moreover, the AAO finds the applicant’s immigration violations do not necessarily demonstrate a callous conscience towards U.S. immigration laws, given the applicant’s age when she entered without inspection and when she was ordered removed. These immigration violations are her only unfavorable factor, which are outweighed by her favorable 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 established that a favorable exercise of the Secretary’s discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.