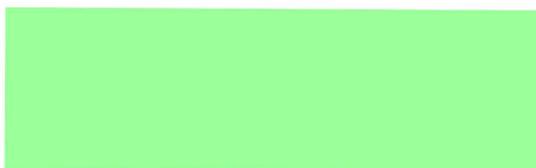


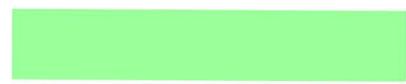
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



(b)(6)



Date: **FEB 21 2014** Office: HARLINGEN, TX



IN RE:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) was denied by the Field Office Director, Harlingen, Texas, and the matter 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 filed a Form I-212, seeking permission to reenter the United States in order to reside with her U.S. citizen husband and step-children.

The field office director found that the applicant testified under oath that she was married to [REDACTED], a Mexican national, there was no evidence the marriage was terminated, and there was no marriage certificate of the applicant's claimed current marriage to a U.S. citizen. The field office director concluded that due to the various discrepancies, the applicant failed to provide any evidence of unusual hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant contends she was nervous during her interview and that she incorrectly stated that she was married when she had actually been divorced for a couple of years. The applicant contends she submitted a copy of her current marriage certificate to her attorney and submits a copy with the 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.

In this case, a copy of the applicant's visa application, submitted on February 28, 2009, shows that the applicant clearly indicated her marital status as divorced. The fact that the applicant subsequently told an immigration officer in August 2009 that she was married to a Mexican national -- after she already obtained a valid visa -- supports the applicant's contention that she was nervous and merely misspoke. The applicant has submitted a copy of her marriage certificate indicating she married her current husband, I [REDACTED] on August 15, 2011. In addition, the applicant has submitted a copy of her divorce certificate showing she and her first husband, Mr. [REDACTED] divorced in October 2006. Therefore, the applicant has sufficiently addressed the field office director's concerns about the discrepancies regarding her marital status.

Regarding the merits of her Form I-212 application, the record reflects that the applicant was placed in expedited removal proceedings and removed from the United States on August 7, 2009. Therefore, the applicant is 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.

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.

The Seventh 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 favorable factors in the applicant’s case are her U.S. citizen husband and her lack of a criminal record. However, the AAO gives diminished weight to the applicant’s marriage to a U. S. citizen as the applicant married her husband on August 2, 2011, after she had been removed.

The unfavorable factors in the applicant’s case include her removal from the United States, and periods of unlawful residence in the United States and unauthorized employment.

The record reflects that the applicant and her husband married in Texas in August 2011, after the applicant had been removed from the United States. There is no indication she was lawfully admitted into the United States when she married her husband and, therefore, the applicant may also be inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for re-entering the United States, without admission, after being removed. Moreover, the record shows that in August 2009, the applicant initially told the immigration officer that she was entering the United States to go shopping in [REDACTED], but upon further questioning, conceded she had previously worked in the United States without authorization and was returning to continue working. Therefore, the applicant also appears to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for misrepresenting a material fact in order to obtain an immigration benefit. These would be additional unfavorable factors.

As the applicant’s only favorable factors are her U.S. citizen husband and the lack of a criminal record, the record does not establish that the applicant warrants a favorable exercise of discretion. Even if the applicant was granted permission to reapply for admission, there is no evidence that she has a valid visa which would allow her to enter the United States. If or when the applicant applies for a visa, the consular officer will inform the applicant of any waivers available. Accordingly, the applicant has failed to establish that a favorable exercise of the Secretary’s discretion is warranted and the appeal will be dismissed.

In application proceedings, it is the applicant’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.