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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**

HL4

[Redacted]

Date: **JUL 27 2012** Office: LOS ANGELES, CALIFORNIA

FILE: [Redacted]

IN RE: Applicant: [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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212) was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant is a native and citizen of Mexico who was found inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for being removed from the United States and reentering without inspection. She now seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director determined that the applicant did “not meet the requirements for consent to reapply” because she is in the United States after reentering illegally and ten years had not elapsed since the date of her departure. He denied her Form I-212 accordingly. *Decision of the Field Office Director*, dated August 30, 2011.

On appeal the applicant, through counsel, asserts that the Field Office Director erred in finding the applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act, because she was ordered deported and reentered without admission before the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act. *Form I-290B, Notice of Appeal or Motion*, filed October 3, 2011. Additionally, counsel claims that the Field Office Director erroneously determined that the applicant was ineligible for a Form I-212 waiver. *Id.*

The record includes, but is not limited to, counsel’s brief in support of the Form I-212, statements from the applicant’s husband and children, letters of support, a psychological evaluation of the applicant’s husband, employment documents for the applicant’s husband and daughter, financial documents, school records and certificates for the applicant and her children, birth certificates for the applicant’s children, and documents pertaining to the applicant’s removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

- (A) Certain alien previously removed.-
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 - (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 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

In the present case, the record indicates that on December 7, 1996, the applicant attempted to enter the United States by presenting a Form I-586, Mexican Border Crossing Card, in someone else's name. On December 10, 1996, the applicant was removed from the United States. The applicant reentered the United States without inspection later that month. She has remained in the United States since that time.

The AAO finds that the applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), after being removed from the United States.¹ However, the Field Office Director improperly determined that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Section 212(a)(9)(C)(i)(II) "applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997." See *Memorandum by Paul W. Virtue, Acting Executive Associate Commission, Office of Programs, Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act*, dated June 17, 1997. The applicant's illegal reentry in December 1996 does not make her inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and therefore, the AAO finds that she is not subject to the provisions of section 212(a)(9)(C) of the Act.

In a brief in support of the applicant's Form I-212, counsel states the applicant has resided in the United States for over 20 years, has three U.S. citizen children, is a stay-at-home mother, pays taxes every year, and has never been arrested for a crime. Additionally, her entire family resides in the United States, and she has "virtually" no family ties to Mexico. The applicant's order of exclusion occurred more than fifteen years ago, and she reentered the United States without inspection because her children were young and needed her.

In a psychological evaluation dated February 21, 2011, [REDACTED] reports that the applicant's husband has resided in the United States since he was sixteen years old. She also states

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

that the applicant's husband would suffer financially by having to provide for two households, pay for their children's and his own college education, and pay for the applicant's medical expenses.

In a statement dated February 22, 2010, the applicant's husband states the applicant suffers from diabetes, and he is worried that she will not be able to control her medical condition in Mexico. He states her diabetes is currently under control; however, if she moves to Mexico, his health insurance will not cover her.

Counsel states the applicant, her husband, and three children reside together. [REDACTED] the applicant's son, states "[t]he thought of losing [the applicant] has been depressing for [him]." [REDACTED] the applicant's daughter, states the applicant has encouraged her in all her activities, has taught her to be a responsible person, and it would be "heart-breaking" to not have the applicant in the United States. [REDACTED] the applicant's daughter, states that she is currently attending college, which she would not have accomplished without the applicant's support. The applicant's husband states the applicant is the "center of [their] family" and his "world will be turned [upside] down if [the applicant] is not by [his] side." [REDACTED] reports that the applicant takes care of the household and the family, and without her, "everything would fall apart." She reports that the applicant's husband is "extremely worried about the welfare of [the applicant] and his family" and it would be "extremely painful" for the applicant's husband to know the applicant is suffering emotionally in Mexico. [REDACTED] states the applicant's husband "is currently experiencing a significant amount of emotional distress, manifested by symptoms of anxiety and depression," and his stress is caused by the possibility that the applicant will have to return to Mexico.

Regarding the hardship the applicant's husband and children will face, the AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements that must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's husband and children, but their hardship will be just one of the determining factors.

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 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 Seventh 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.

The favorable factors in this matter are the applicant's family ties to her U.S. citizen husband and children, hardship to her spouse and children, her husband's emotional issues, the lack of a criminal record, and the approval of a petition for alien relative.

The AAO finds that the applicant's attempted entry into the United States by presenting a Form I-586 in another person's name and her removal from the United States are unfavorable factors. Additionally, the applicant's reentry into the United States without inspection is another unfavorable factor.

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 and the application approved.

Even though the AAO has now sustained the applicant's appeal and approved her Form I-212, the applicant will need to file an Application for Waiver of Grounds of Inadmissibility (Form I-601), to waive her ground of inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §

1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact.

ORDER: The appeal is sustained. The application is approved.