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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: PHOENIX, AZ Date: AUG 18 2003

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)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT: [redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (I-212 application) was denied by the District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 43-year old native and citizen of Mexico. The applicant was found to be inadmissible to the United States pursuant to sections 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered deported from the United States. The applicant 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 live with her U.S. citizen husband and her U.S. citizen children.

The director discussed the favorable and unfavorable factors in the applicant's case. The director then determined that the unfavorable factors outweighed the favorable factors and concluded that the applicant did not merit a favorable exercise of discretion. The I-212 application was denied accordingly.

On appeal, counsel asserts that the Bureau failed to correctly assess the emotional, financial, and psychological damage to the U.S. citizen spouse and children. Counsel attached a sworn affidavit of the applicant's spouse and indicated that he would submit additional evidence within thirty days of the appeal. More than eleven months have lapsed since the date of the appeal and no additional evidence has been submitted into the record.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9) states in pertinent part:

> (9) Aliens Previously Removed.-
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> (A) Certain aliens previously removed.-
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> (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 5 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-
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> (I) has been ordered removed under section 240 or any other provision of law, or
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> (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.
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> (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 Attorney General has consented to the alien's reapplying for admission.

Approval of an I-212 application requires that the favorable aspects of an applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The Seventh Circuit Court of Appeals held in *Garcia-Lopez v. INS,* 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation (removal) order has been entered.

In pointing out the favorable aspects of the case, the director stated that the applicant has a U.S. citizen

husband and five U.S. citizen children, and that she has an approved petition for alien relative (I-130 application). No other favorable factors were listed in the director's decision, nor were any found in the record, and the director's decision clearly reflects that he gave the above factors diminished weight due to the fact that the applicant's remarriage took place in Mexico in 1988 (after the applicant's 1986 deportation from the United States). Moreover, the decision indicates that the applicant acquired her equities after her deportation and subsequent illegal reentry into the United States. It is noted that the births of three of the applicant's children occurred after the deportation and subsequent illegal reentry.

The director's decision additionally referred to the Regional Commissioner case, *Matter of Castaneda,* 14 I&N Dec. 387 (Regional Commissioner 1973) to support his position that family ties in the United States, by themselves, do not compel the favorable exercise of discretion for an I-212 application. Moreover, the director's decision also referred to *Jaimez-Revolla v. Bell,* 598 F.2d 243 (D.C. Cir., 1979) to support the contention that, despite the fact that an I-212 applicant is married to a U.S. citizen and is the beneficiary of a petition for alien relative, her I-212 application may be denied if the applicant has demonstrated a proven disregard for immigration laws.

The director's decision pointed out that the applicant had violated U.S. immigration laws on at least two occasions and had committed a criminal offense as a result of these violations. The director's decision then demonstrated the applicant's proven disregard for the laws of the United States by providing an in-depth discussion of her unfavorable history of violation of immigration laws in the United States. Citing the evidence on the record, the director noted that the applicant married [redacted] for the first time in December 1979 in Mexico then divorced him in March 1984. The evidence further indicates that the applicant informed the Bureau that she paid a U.S. citizen to marry her and file an immigrant petition on her behalf. She married the U.S. citizen; he filed a petition on her behalf and withdrew it. They subsequently divorced. The applicant was deported on June 24, 1986. The applicant indicates on her Form I-212 that she last entered the United States without inspection on June 24, 1986 and remarried [redacted] on August 22, 1988.

In addition, the decision points out that the applicant was ordered deported and removed from the U.S. in 1986 and she disregarded a bar to reentry into the U.S. absent INS approval, and illegally returned and resided in the United States. *See District Director's Decision,* dated August 12, 2002 at 2.

This office finds that the director's decision did balance the favorable and unfavorable aspects of the applicant's case, and that the decision analyzed how the unfavorable factors outweighed the favorable factors in the case.

On appeal, counsel submitted evidence that the applicant and her spouse own their own home and that two of their children are attending school.

In review, this office finds that the unfavorable factors in the applicant's case outweigh the favorable factors. The applicant's admission that she engaged in marriage fraud in order to obtain immigration benefits is a serious unfavorable factor. The fact that she reentered illegally without permission on the day that she was deported is also a serious unfavorable factor.

In discretionary matters, the applicant bears the full burden of proving that he merits an exercise of discretion by the Secretary of Homeland Security ("Secretary"). *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant in this case has failed to establish that she warrants a favorable exercise of discretion.

ORDER: The appeal is dismissed.