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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 27 2005

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]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Director, Vermont Service Center for abandonment. The applicant filed a motion to reopen. The director granted the motion to reopen and reaffirmed its denial of the application. 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 55-year old native and citizen of Guatemala. On October 29, 1992, the applicant was ordered deported by an immigration judge. 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 79-year old U.S. citizen husband.

The director determined that the applicant is inadmissible to the United States pursuant to sections 212(a)(9)(A)(ii) and 212(a)(6)(A) and (B) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(A)(ii), (B) and 1182(a)(6)(C)(i), for being present in the United States without being admitted or paroled, for having been ordered deported from the United States, and, for failing to attend her removal hearing. 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. The I-212 application was denied accordingly.

On appeal, counsel asserts that the director erred in denying the application. Counsel also indicated that he would submit a brief and or additional evidence to the AAO within thirty days. More than seven months have lapsed and counsel failed to supplement 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.
>
> (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. Furthermore, 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

(removal) proceedings, and with knowledge that the alien might be deported. *See Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992).

The favorable factors in the applicant's case are the prospect of hardship to her U.S. citizen husband and that she is the beneficiary of an approved immigrant visa petition. These favorable factors are given less weight because they are equities acquired after the applicant's deportation. Another favorable factor is that she has no known criminal history.

The unfavorable factors in the case include the applicant's being ordered removed in 1992, her failure to depart the country and her illegal presence in the United States.

The applicant has not established that the favorable factors in her case outweigh the unfavorable factors. By failing to depart the United States after her deportation order and then remaining unlawfully in the United States for 12 years, the applicant has shown a lack of respect for the immigration laws of the United States as well as a lack of rehabilitation. The director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant in this case failed to establish that she warrants a favorable exercise of the Secretary's discretion.

ORDER: The appeal will be dismissed.