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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

FILE: [redacted] Office: Vermont Service Center Date: MAY 23 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)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was lawfully admitted to the United States as a temporary resident on April 23, 1988. On December 8, 1995, the applicant applied for admission to the United States as a returning resident. Upon indicating that he had been outside the United States for 14 months, his inspection was deferred until December 20, 1995, for him to present evidence of a reentry permit. On that date the applicant gave a sworn statement regarding his 14-month absence from the United States and his mother's illness. The applicant was served with a Form I-122 (Notice to Applicant for Admission Detained for Hearing before Immigration Judge). On April 24, 1996, an immigration judge ordered the applicant excluded and deported from the United States *in absentia*. The record reflects he has never departed.

The applicant married [redacted] on March 9, 1989, in New York and she became a lawful permanent resident on December 1, 1990. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii).

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, counsel submits medical evidence dated November 6, 2002, indicating that the applicant suffers from a chronic disabling medical condition: End Stage Renal Disease (ESRD), and requires hemodialysis three times a week. The notice indicates that the treatment must continue indefinitely to preserve the applicant's life.

On appeal, counsel discusses other aspects of the matter including the fact that the applicant's wife is a lawful permanent resident and lives in the United States with him, the fact that there are no other relatives in Mexico to help him get documentation regarding his mother's illness, that he did not realize that he could not remain outside the United States for more than a year, and that he did not know about the hearing.

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

> (i) 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) Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 of the Act 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) 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 [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

Section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA became effective on September 30, 1996. If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Matter of George*, 11 I&N Dec. 419 (BIA 1965); *Matter of Leveque*, 12 I&N Dec. 633 (BIA 1968).

The Bureau has held an application for permission to reapply for admission to the United States may be approved when the applicant establishes he has equities within the United States or there are other favorable factors which offset the fact of removal at Government expense and any other adverse factors which may exist. Circumstances which are considered by the Bureau include, but are not limited to: the basis for removal the recency of removal; the length of residence in the United States; the moral character of the applicant; the respect for law and order; the evidence of reformation and rehabilitation; the existence of family responsibilities within the United States; any inadmissibility to the United States under other sections of the law; the hardship involved to the alien and others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973). An approval in this proceeding requires the applicant to establish that the favorable aspects outweigh the unfavorable ones.

It is appropriate to examine the basis of a removal as well as an applicant's general compliance with immigration and other laws. Evidence of serious disregard for law is viewed as an adverse factor. *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978). Family ties in

the United States are an important consideration in deciding whether a favorable exercise of discretion is warranted. *Matter of Acosta*, 14 I&N Dec. 361 (D.D. 1973).

The favorable factors in this matter are the applicant's family ties, the applicant's eligibility for an immigrant visa as the spouse of a lawful permanent resident, the absence of a criminal record, and the prospect of general hardship to his family and to the applicant due to his serious illness.

The unfavorable factors in this matter include the applicant remaining outside the United States for more than one year, his failure to appear for the removal hearing, and his failure to depart.

Although the applicant's actions in this matter should not be condoned, considerable weight must be given to the needs of his family, his good behavior, and the high degree of hardship to himself due to his medical condition. The applicant has now established by supporting evidence that the favorable factors outweigh the unfavorable ones. Therefore, the director's decision will be withdrawn.

In discretionary matters, the applicant bears the full burden of proving eligibility in terms of equities in the United States that are not outweighed by adverse factors. After a careful review of the record, it is concluded that the applicant has established the applicant warrants a favorable exercise of the Attorney General's discretion. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The director's decision is withdrawn, and the application is approved.