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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**



H4

Date: APR 11 2012 Office: SALT LAKE CITY, UT

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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Salt Lake City, Utah, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Venezuela who was ordered removed by an immigration judge on August 8, 2000 and departed the United States on May 30, 2009. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 reside in the United States with her U.S. Citizen spouse.

The Field Office Director determined the applicant incorrectly filed the I-212 application, failed to submit sufficient evidence in support of the application, and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated September 6, 2011.

On appeal the applicant submits evidence of her relationship with her spouse as well as evidence of his citizenship and visits to Venezuela. The applicant also includes documentation on her sister's psychological problems. The applicant explains that she was only six years old when she and her family entered the United States, and she has faced consequences for her parents' decision to bring her without proper documentation.

The record contains evidence of birth, marriage, residence, and citizenship, letters from family, medical documents, evidence of removal proceedings, and photographs. The entire record was reviewed and considered in rendering a decision on 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.

The record reflects that the applicant was born on June 6, 1991 in Venezuela. She and her family entered the United States without inspection on or about July 1, 1997. She was issued a Notice to Appear on July 3, 1997, which charged her with removability under section 212(a)(6)(A)(i) of the Act. The immigration judge ordered her removed on August 8, 2000. The applicant appealed the order, and the Board of Immigration Appeals (BIA) affirmed the immigration judge's decision on June 12, 2002. The BIA denied a subsequent motion to reopen on September 20, 2002. The applicant was apprehended by immigration officials on December 17, 2008, and was released on an order of supervision. The applicant married her U.S. Citizen spouse on May 1, 2009, and subsequently departed the United States on May 30, 2009. Inadmissibility is not contested on appeal. The applicant is, therefore, 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.<sup>1</sup>

The record further reflects that the applicant was six years old when she and her family entered without inspection in 1997. When the applicant departed the United States, she was under 18 years of age. The applicant has submitted evidence on her relationship with her U.S. Citizen spouse, showing that he visited her in Venezuela in 2009 and 2010. Furthermore, the record contains evidence of the applicant's sister's psychological difficulties, indicating that the sister suffers from anxiety disorder and has been cutting her wrists.

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<sup>1</sup> The Field Office Director noted that the Form I-212 application needs to be submitted by the applicant, not by another person. However, the AAO notes that the application was signed by the applicant and prepared by her spouse, which complies with the instructions on the Form I-212. Additionally, though the Field Office Director indicated that the I-212 application should be rejected because it was an older version, it was signed before the new version of the application form was released on November 23, 2010.

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.<sup>2</sup>

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 in the United States 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 7<sup>th</sup> 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

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<sup>2</sup> It is noted that although the Field Office Director's found the applicant had not shown extreme hardship to her U.S. Citizen spouse, extreme hardship is not required for a Form I-212 application. Furthermore, even though the Field Office Director indicated that the applicant failed to submit evidence of her spouse's U.S. Citizenship, his citizenship was verified when the Form I-130 Petition for Alien Relative was approved.

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 applicant’s unfavorable factors consist of her entry without inspection, for which she was ordered removed. However, the record reflects that the applicant was only six years old when her family brought her into United States without inspection. Given this young age, intent to circumvent immigration laws cannot be imputed to her.

The applicant married a U.S. Citizen and shortly thereafter returned to Venezuela. Though less weight must be given to this equity because the marriage occurred after she was ordered removed, there is also evidence that the applicant’s sister experiences hardship without the applicant, that the applicant has no criminal history, and has lived in the United States for most of her life. Furthermore, the applicant voluntarily departed the United States in 2009, and because she left before her 18<sup>th</sup> birthday, she is not inadmissible for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act. These positive equities, especially when viewed in light of the applicant’s young age when she entered without inspection, outweigh the negative factors in her case and warrant the applicant a favorable exercise of discretion.

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.

**ORDER:** The appeal is sustained.