



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 28334794

Date: NOV. 1, 2023

Appeal of Hartford, Connecticut Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

The Applicant, a native and citizen of China, seeks conditional approval of her application for permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii); 8 C.F.R. § 212.2(j)

The Director of the Hartford, Connecticut Field Office denied the Form I-212, Application for Permission to Reapply for Admission (application for permission to reapply), concluding that the record did not establish that the Applicant's favorable factors outweighed her unfavorable factors and therefore she did not merit a favorable exercise of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national who has been ordered removed under section 240 or any other provision of law, or who departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such departure or removal, is inadmissible. Foreign nationals found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) if prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the foreign national's reapplying for admission.

8 C.F.R. § 212.2(j) states that a foreign national whose departure will execute an order of deportation shall receive a conditional approval depending upon his or her satisfactory departure. However, the grant of permission to reapply does not waive inadmissibility under section 212(a)(9)(A) of the Act

resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee, supra*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the 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").

Equities that came into existence after a foreign national has been ordered removed from the United States ("after-acquired equities"), including family ties, have diminished weight for purposes of assessing favorable factors in the exercise of discretion. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Camalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408, 416 (BIA 1998), need not be accorded great weight by the director in a discretionary determination).

## II. ANALYSIS

The Applicant arrived in the United States on May 5, 2004, with an altered Singaporean passport. She indicated she was coming to the United States to seek asylum, was placed in asylum-only removal proceedings, and was ordered removed on [REDACTED] 2005. The Board of Immigration Appeals (the Board) summarily affirmed the immigration judge's decision on November 24, 2006, the Applicant filed a motion to reconsider, and the Board dismissed her appeal on March 28, 2007. The Applicant filed a petition for review with the U.S. Court of Appeals for the Second Circuit and her case was remanded to the Board. The Board again dismissed her appeal on December 19, 2008, and denied her motions to reopen on June 29, 2010 and December 9, 2010. The Applicant has not departed the United States, and therefore she will become inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure from the United States. The Applicant does not contest this finding on appeal. The issue on appeal is whether the Applicant merits a favorable exercise of discretion. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant's spouse and mother, a psychological evaluation, immigration records, statements in support of the Applicant, and information on China.

On appeal, the Applicant asserts that the Director undervalued her favorable factors, including her U.S. citizen spouse and 19-year-old daughter, an approved Form I-130, Petition for Alien Relative, lengthy residence in the United States, hardship her spouse and daughter would experience in China or if separated from her, hardship she would experience in China due to country conditions, lack of a

criminal history, good character as indicated in statements of support, and operation of a business for which she pays taxes. She asserts that the Director overweighed her minor unfavorable factors, including her unauthorized employment, breach of immigration bond, and arrival at a port of entry with an altered Singaporean passport. Furthermore, she contends that her unauthorized employment should not be considered an unfavorable factor as she is providing employment opportunities to U.S. workers, and her business tax filings and employee income tax distributions benefit local, state, and federal governments. Next, the Applicant claims that her case is distinguishable from the application for permission to reapply cases the Director cited, and the Director misapplied after-acquired equities caselaw as her after-acquired equities were not acquired while in removal proceedings and her spouse was not aware of her removal order when they got married. The Applicant also noted the Director's statement that the background information and articles on China were not accompanied by written explanations of how they relate to her circumstances. However, the Applicant states this was not justified, as there were detailed and elaborate explanations presented in the supporting brief of China's egregious human rights record and restrictions on speech, travel, and religion, which would severely impact her spouse. Furthermore, the Applicant mentions that while she used an altered Singaporean passport, it was to flee persecution and oppression in China. In conclusion, the Applicant asserts that her favorable factors outweigh her unfavorable factors, and she merits a favorable exercise of discretion.

In reviewing the Applicant's claims, we first note the Director cited several cases, which we incorporate into our decision by reference, solely for the purpose of listing relevant factors to be considered in a discretionary analysis and mentioning the decreased weight to be given to after-acquired equities. We will next address the Applicant's favorable and unfavorable factors. The Applicant's favorable factors include her U.S. citizen spouse and 19-year-old daughter, an approved Form I-130, Petition for Alien Relative, hardship to her spouse if he remained in the United States or relocated to China, statements in support of her good character, and lack of criminal history. In weighing the Applicant's favorable factors, we consider that she married her spouse in 2014, therefore he is considered an after-acquired equity and diminished weight is given to this family tie and the hardship he would experience upon her removal. The approved Form I-130 was filed in 2016 and is therefore also considered an after-acquired equity. The Applicant's claim that the Director misapplied after-acquired equities caselaw, as her after-acquired equities were not acquired while in removal proceedings and her spouse was not aware of her removal order when they got married, is misplaced. Again, after-acquired equities are those that come into existence *after* a foreign national has been ordered removed from the United States. Last, the record does not include sufficient evidence to establish the level of hardship the Applicant would experience upon removal; and it does not include evidence of the Applicant's daughter's hardship, the Applicant's business, the Applicant's payment of personal or business taxes, or the claimed benefits the business provides to U.S. workers.

The Applicant's unfavorable factors include her unauthorized employment, unauthorized period of stay, breach of her immigration bond, and intended use of an altered Singaporean passport to seek admission to the United States. Specifically, the Applicant's Form I-877, Record of Sworn Statement in Administrative Proceedings, reflects that she arrived in the United States on May 5, 2004, she was intercepted by an immigration officer and was in possession of an altered Singaporean passport, she was going to present the passport in the primary inspection process, and she knowingly and willingly obtained the passport for the purpose of gaining illegal entry into the United States.

Viewing the totality of the circumstances, including the Applicant's numerous immigration violations, the diminished weight of her after-acquired equities, and the lack of supporting evidence for many of her claims, we determine she has not established her favorable factors outweigh her unfavorable factors. Therefore, a favorable exercise of discretion is not warranted, and the application will remain denied.

**ORDER:** The appeal is dismissed.