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

**PUBLIC COPY**

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



MAY 07 2003

FILE: [Redacted] Office: Montreal

Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under  
Section 212(i) of the Immigration and Nationality Act, 8  
U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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 which 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

MAY 07 03-0242212

**DISCUSSION:** The application was denied by the Port Director, Montreal, Canada, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The applicant is a native and citizen of Canada who, according to the port director's decision, was found to be inadmissible to the United States by a consular officer under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented a material fact to gain a benefit. The applicant married a U.S. citizen on September 19, 1999, in Canada, and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of the permanent bar under sections 212(i) of the Act, 8 U.S.C. § 1182(i).

The port director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly.

The decision also indicates that the applicant was expeditiously removed from the United States on June 30, 1999. As such, he is also inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered expeditiously removed from the United States. That documentation is not present in the record for review. The record however does contain a letter from the port director dated January 14, 2002, in which the applicant was directed to file a Form I-212 Application for Permission to Reapply for Admission.

On appeal the applicant discusses the circumstances related to his situation and explains the hardship that would occur if his wife broke her five-year contract with the Church of Scientology.

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.

(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 has consented to the alien's reapplying for admission.

The record reflects that the applicant was ordered removed under section 235(b)(1) of the Act, and as a result, he requires permission to reapply for admission.

Service instructions at O.I. § 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded.

The present record does not contain evidence that the applicant has remained outside the United States for five consecutive years since the date of deportation or removal as required by 8 C.F.R. § 212.2(a), or that he was granted permission to reapply for admission to the United States.

Therefore, since there is no evidence that the Form I-212 application has been adjudicated first and approved in this instance, the appeal of the port director's decision denying the Form I-601 application will be rejected, and the record remanded so that the officer in charge may adjudicate the Form I-212 application first, or provide evidence for the record that a decision has already been made on the Form I-212.

If the officer in charge approves the Form I-212 application or provides evidence that such application has been approved, he shall certify the record of proceeding to the Associate Commissioner for review and consideration of the appeal regarding the Form I-601 application. However, if he denies the Form I-212 application or provides evidence that such application has been denied, he shall certify that decision to the Associate Commissioner for review, reject the Form I-601 application, and refund the fee.

**ORDER:** The appeal is rejected. The decision of the officer in charge is withdrawn. The matter is remanded for further action consistent with the foregoing discussion.

APR 11 1964  
U.S. DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE