

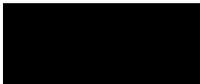


U.S. Citizenship
and Immigration
Services

Handwritten initials or mark.



FILE:



Office: VIENNA, AUSTRIA

Date: **OCT 26 2004**

IN RE:

Applicant:



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:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent invasion of personal privacy
granted

PHOTOCOPY

DISCUSSION: The Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied by the Acting Officer in Charge Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal dismissed.

The applicant is a native and a citizen of the Czech Republic who attempted to procure admission into the United States on September 30, 2002, at the Hartsfield International Airport, Atlanta, Georgia. The applicant was found inadmissible under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or lieu document. Consequently, on October 1, 2002, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant married a U.S. citizen on October 30, 2002, in Sumperk, Czech Republic and he is the beneficiary of an approved petition for alien relative filed by his U.S. citizen spouse. He 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 travel to the United States and reside with his U.S. citizen spouse.

The Acting Officer in Charge determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. See *Acting Officer in Charge Decision* dated July 30, 2003.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b).

The record indicates that the Acting Officer in Charge issued the decision on July 30, 2003. It is noted that the Acting Officer in Charge properly gave notice to the applicant that he had 33 days to file the appeal. The Notice of Appeal to the AAO (Form I-290B) was received by Citizenship and Immigration Services (CIS) on November 14, 2003, 105 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states in pertinent part:

B) Untimely appeal.

(1) Rejection without refund of filing fee. An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The record of proceedings reflects that the appeal of the denial of the Application for Permission to Reapply for Admission After Removal under section 212(a)(9)(A)(iii) of the Act was filed on November 14, 2003, 105 days after the decision was issued. As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.