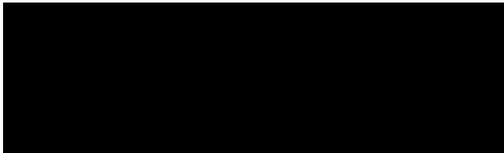


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FILE:  Office: CALIFORNIA SERVICE CENTER Date: **DEC 05 2005**

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:



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

**DISCUSSION:** The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The Director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native of Russia and citizen of the Ukraine, who entered the United States without a lawful admission or parole on or about April 20, 1999. The applicant applied for asylum with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) and on November 16, 1999, she was interviewed for asylum status. On December 14, 1999, the applicant was served with a Notice to Appear (NTA) for a removal hearing before an Immigration Judge. The record reflects that on July 20, 2000, an Immigration Judge ordered the applicant removed from the United States pursuant to section 237(a)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(1)(A), which states that any alien who, at the time of entry or adjustment of status, was within one or more of the classes of aliens inadmissible by the law existing at such time, is deportable. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on July 16, 2003. The applicant failed to surrender for removal or depart from the United States and a Warrant of Deportation (Form I-205) was issued on November 13, 2003. On August 23, 2003, the applicant married a U.S. citizen who filed a Petition for Alien Relative (Form I-130) on her behalf. The applicant is inadmissible under section 212(a)(9)(A)(ii) of 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 remain in the United States to reside with her U.S. citizen spouse and stepchild.

The Director determined that the applicant did not file the Form I-212 in conjunction with an Application to Register Permanent Residence or Adjust Status (Form I-485) as required by 8 C.F.R. 212.2(e), and denied the application accordingly. *See Director's Decision* dated November 11, 2004.

On appeal, counsel submits a letter in which he states that he did not file a Form I-485 on behalf of the applicant in conjunction with the Form I-212, because he thought that the applicant would have to depart the United States. Counsel submits copies of Forms I-130 and I-485 indicating that they were filed with CIS on December 9, 2004. In addition, counsel states that the applicant's stepchild, who is a Type I diabetic, should be the deciding factor in reconsidering the denial of the Form I-212, because he would suffer extreme hardship if the applicant's Form I-212 were not granted.

In the instant case, the Form I-212 was not filed in conjunction with Form I-485 and the Director denied the Form I-212 accordingly. As noted above, on appeal counsel submits proof that a Form I-485 was filed on December 9, 2004. Therefore, the applicant has all the necessary documentation for her Form I-212 to be adjudicated pursuant to section 212(a)(9)(A)(iii) of the Act.

The record of proceedings contains documentation that was submitted by counsel when the Form I-212 was filed. In his decision, the Director did not examine this documentation since he did not adjudicate the Form I-212 pursuant to section 212(a)(9)(A)(iii) of the Act. In view of the foregoing, the Director's decision will be withdrawn, and the record will be remanded to him in order to adjudicate the Form I-212 pursuant to section 212(a)(9)(A)(iii) of the Act.

**ORDER:** The Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.