

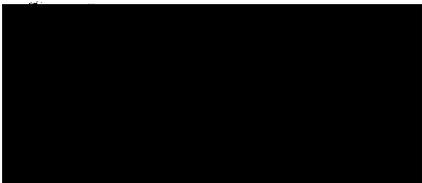
**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



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

H14



FILE:



Office: MANILA

Date: **NOV 09 2005**

IN RE:



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

**DISCUSSION:** The Form I-212 application for permission to reapply for admission was denied by the Acting Immigration Attaché, Manila. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the decision of the acting immigration attaché will be withdrawn, and the applicant's Form I-212 will be declared moot.

The applicant is a native and citizen of the Philippines. The record reflects that he entered the United States in lawful B-2 status on January 11, 1989. He filed an application for asylum on December 5, 1991, which was referred to an immigration judge on March 31, 1996. An immigration judge denied his application for asylum and request for suspension of deportation on October 23, 1997, and granted voluntary departure until March 1, 1998. The applicant filed an appeal, which was denied on May 28, 1999. The applicant was again granted voluntary departure until June 28, 1999. The applicant's period of voluntary departure was extended on two occasions, until October 30, 1999 and finally until October 30, 2000. The applicant departed the United States at Los Angeles on October 30, 2000.

The applicant's U.S. citizen wife filed a Form I-130, Petition for Alien Relative, on behalf of the applicant, which was approved on October 9, 2001. Citizenship and Immigration Services (CIS) issued a notice to the applicant informing him that he must file a Form I-601, Application for Waiver of Ground of Excludability, as a consular officer had deemed him inadmissible. The notice specifically referenced that the applicant must obtain a waiver under section 212(h) of the Act.

On September 11, 2002, the applicant filed a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, in which he noted that he was deported or removed on October 30, 2000. On September 23, 2002, the applicant filed a Form I-601 application, noting that he had been deemed inadmissible pursuant to section 212(a)(9)(ii) of the Act for having been ordered removed from the United States.

On May 5, 2003, the officer in charge, Manila, issued a Form I-292 denying the applicant's Form I-601 application for a waiver. On May 17, 2003, the acting immigration attaché issued a corrected Form I-292, stating that the denial of May 5, 2003 relates to the applicant's Form I-212 application, not the applicant's Form I-601 application. An attachment to the Form I-292 cites sections 212(a)(9)(A)(i) and (ii) of the Act, implying that the applicant is inadmissible for having been ordered removed from the United States. The attachment states that the applicant resided illegally in the United States. The attachment cites section 212(a)(6)(C), which addresses a ground of inadmissibility due to an individual's engaging in fraud or misrepresentation. The attachment ultimately finds that the applicant failed to establish that his spouse would suffer extreme hardship if he is prohibited from entering the United States.

Upon review, the record does not support that the applicant requires a Form I-212 application. The applicant departed the United States on October 30, 2000 under a current order of voluntary departure. The record supports that the applicant complied with the voluntary departure order, and he was not ordered removed. As such, the applicant is not inadmissible pursuant to section 212(a)(9)(A)(i) or (ii) of the Act for having been previously ordered removed, and he does not require a Form I-212 application to establish eligibility for reentry under Section 212(a)(9)(A)(iii) of the Act. The acting immigration attaché's denial of the applicant's Form I-212 application will therefore be withdrawn and the application declared moot.

As noted above, the record contains correspondence to the applicant from CIS informing him that he must file a Form I-601, Application for Waiver of Ground of Excludability, as a consular officer had deemed him inadmissible. However, the record does not support that the applicant is subject to grounds of inadmissibility that require a Form I-601 application for a waiver. The AAO will address the acting immigration attaché's various implications regarding the applicant's inadmissibility below.

The attachment to the Form I-292 states that the applicant was in the United States without a legal status.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(iii) Exceptions -

(II) Asylees. No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

The evidence does not show that the applicant has accrued unlawful presence in the United States such that he is inadmissible under section 212(a)(9)(B)(i) of the Act. The applicant applied for asylum in 1991, prior to the enactment of the unlawful presence provisions under the Act.<sup>1</sup> His application was pending until his appeal was dismissed on May 28, 1999. This period of stay in the United States falls under the exception to unlawful presence provided in section 212(a)(9)(B)(iii)(II) of the Act, thus it is not deemed unlawful presence. It is noted that the record does not show that the applicant engaged in unauthorized employment

---

<sup>1</sup> Unlawful presence for the purpose of assessing admissibility under section 212(a)(9)(B)(i) of the Act does not accrue until or after April 1, 1997, the date the unlawful presence provisions were enacted.

that would render him ineligible for an exception under section 212(a)(9)(B)(iii)(II) of the Act. The applicant was under an active voluntary departure order from the time that his asylum appeal was denied until he departed the United States, thus this period is not deemed unlawful presence. As the applicant has not accrued unlawful presence in the United States, he is not inadmissible under section 212(a)(9)(B)(i) of the Act.

The attachment to Form I-292 cites section 212(a)(6)(C), which provides the following:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

However, the record contains no evidence or indication that the applicant engaged in fraud or misrepresentation, and thus this basis for inadmissibility is not supported.

The notice issued to the applicant by CIS informing him of the need to file a Form I-601, Application for Waiver of Ground of Excludability, referenced section 212(h) of the Act. Section 212(h) provides for the possible waiver of conditions of inadmissibility due to various criminal actions. However, the record contains no reference to criminal acts committed by the applicant, and thus it does not appear that the applicant requires a waiver under section 212(h) of the Act.

In light of the foregoing, the record as it stands presents no basis for the applicant being found inadmissible. If the acting immigration attaché has evidence of inadmissibility under any of the stated grounds, a proper denial of the Form I-601 application should be prepared indicating precisely what the ground(s) of inadmissibility is/are and the applicant should be provided an opportunity to appeal that decision.

**ORDER:** The appeal is dismissed, the decision of the acting immigration attaché is withdrawn, and the applicant's Form I-212 is declared moot.