

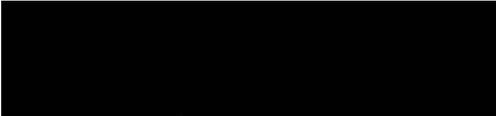
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U.S. Citizenship
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FILE: [REDACTED] Office: NEWARK Date: MAY 17 2006

IN RE: [REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Newark, New Jersey, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who, on April 15, 1999, at the Newark, New Jersey, Port of Entry, applied for admission into the United States. The applicant presented a photo-substituted Jamaican passport containing a photo-substituted U.S. nonimmigrant visa, both under the name [REDACTED]. The applicant was found inadmissible pursuant to 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 attempted to procure admission into the United States by fraud. Consequently, on April 16, 1999, 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). On September 12, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On August 28, 2001, the applicant appeared at CIS' Newark District Office. The applicant admitted that, on January 1, 2000, he had procured admission into the United States by presenting a fraudulent passport to immigration inspection officers at the Newark, New Jersey, Port of Entry. The applicant also admitted that prior to this entry he had been expeditiously removed from the United States in April 1999. On December 16, 2002, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 remain in the United States and reside with his U.S. citizen spouse and children.

The district director determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(A) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(A), for seeking and procuring admission into the United States by fraud and for entering the United States within 5 years after having attempted to enter the United States illegally and having been removed from the United States. The district director determined that the applicant had failed to establish that his family members would suffer extreme hardship and the unfavorable factors in the applicant's case outweighed the favorable factors. The district director then denied the Form I-212 accordingly. *See Director's Decision* dated March 2, 2005.

The proceedings in the present case are for permission to reapply for admission into the United States after deportation or removal and, therefore, the AAO will not discuss the applicant's grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act. These proceedings are limited to the issue of whether or not the applicant meets the requirements necessary for the ground of inadmissibility under section 212(a)(9)(A) of the Act to be waived.

On appeal, the applicant asserts that his family members would suffer extreme hardship if he were removed from the United States and that he warrants a favorable exercise of discretion. *See Form I-290B*, dated March 31, 2005.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. As noted previously, the applicant was expeditiously removed from the United States on April 16, 1999. The applicant reentered the United States after his removal without a lawful admission or parole and without permission to reapply for admission.

The AAO finds that the applicant is inadmissible under sections 212(a)(9)(A) and 212(a)(9)(C)(i) of the Act and, therefore, must receive permission to reapply for admission.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(i) Arriving aliens.- 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 five 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) Exception.- 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 Secretary has consented to the alien's reapplying for admission.

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

- (2) the alien's--
 - (A) removal;
 - (B) departure from the United States;
 - (C) reentry or reentries into the United States; or
 - (D) attempted reentry into the United States.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless more than 10 years have elapsed since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago *and* that CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on April 16, 1999, less than ten years ago. He is currently statutorily ineligible to apply for permission to reapply for admission. The applicant is eligible to file the Form I-212 after April 16, 2009, at which time he will also need to file an Application for Waiver of Grounds of Excludability (Form I-601) to waive section 212(a)(6)(C)(i) inadmissibility grounds pursuant to section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. The applicant in the instant case does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.