

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H4

FILE:

Office: NEWARK, NEW JERSEY

Date: OCT 10 2006

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared unnecessary.

The applicant is a native and citizen of Israel who, on July 5, 2000, at the JFK International Airport applied for admission into the United States as a nonimmigrant visitor for pleasure. The applicant presented a valid Israeli passport that contained a falsely dated Israeli admission stamp. 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 and willfully misrepresenting a material fact. Consequently, on the same date 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). 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 as a nonimmigrant visitor.

The District Director determined that the applicant was statutorily ineligible for any relief or benefit under the Act, because he does not have a qualifying family member in order to be eligible to file a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to waive his ground of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i). In addition, the District Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones. The District Director then denied the Form I-212 accordingly. *See District Director's Decision* dated June 23, 2004.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is not signed by the applicant. Therefore, the AAO will not be sending a copy of the decision to the attorney mentioned on the Form G-28, but this office will accept the submitted information.

The AAO finds that the District Director erred in his decision stating that the applicant is not eligible for any exception or waiver under the Act. The applicant, in the present case, filed a Form I-212 in order to be eligible to apply for a nonimmigrant visa. If the applicant's Form I-212 is granted, he will be eligible to file a waiver of his ground of inadmissibility pursuant to section 212(d)(3) of the Act.

On appeal, counsel submits a brief and supporting documentation. In his brief, counsel recites the facts that led to the applicant's removal from the United States and states that the applicant did not intentionally or knowingly attempt to enter the United States by fraud or willful misrepresentation. Counsel submits documentation from Israeli authorities in an effort to show that the stamp in the applicant's passport was an error committed by Israeli immigration officials. In addition, counsel requests that the July 5, 2000, order removing the applicant from the United States, prohibiting him from entering the United States for five years and canceling his nonimmigrant visa be reversed. Counsel further requests that the applicant be granted a tourist visa and be allowed to enter the United States or in the alternative be granted permission to reapply for a visa to the United States.

The AAO does not have jurisdiction over the circumstances surrounding the applicant's expedited removal from the United States or the cancellation of his nonimmigrant visa. The fact remains that the applicant was removed from the United States on July 5, 2000, and, therefore, he is inadmissible under section

212(a)(9)(A)(i) of the Act. The proceeding in the present case is limited to the application for permission to reapply for admission into the United States after deportation or removal under section 212(a)(9)(A)(iii) of the Act.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

Section 212(a)(9)(A) 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.

To recapitulate, the applicant was removed from the United States on July 5, 2000. The record of proceedings does not reflect that the applicant re-entered or attempted to reenter the United States after his removal. Counsel, states that the applicant resides in Israel and there is no documentary evidence to show otherwise. It has now been more than five years since the applicant's date of removal. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act. Accordingly, the appeal will be dismissed and the Form I-212 will be declared unnecessary, as it has been established that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act.

The AAO notes that the applicant remains inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. Since the applicant wishes to visit the United States as a non-immigrant visitor, he must file a waiver of his ground of inadmissibility pursuant to section 212(d)(3) of the Act.

ORDER: The District Director's decision is withdrawn, the appeal is dismissed and the application declared unnecessary.