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Services



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FILE:



Office: NEBRASKA SERVICE CENTER

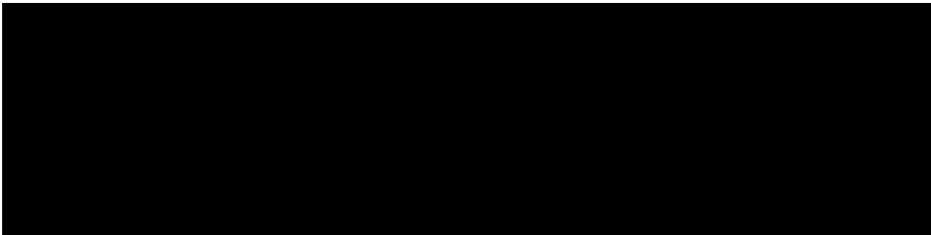
Date: **AUG 27 2007**

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:



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 Acting Director, Nebraska Service Center, 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 director's decision affirmed and the application denied.

The applicant is a native and citizen of Canada who, on April 20, 2003, applied for admission to the United States at the Sumas, Washington Port of Entry. The applicant was traveling with and attempting to enter the United States with his wife and daughter. When questioned by immigration officers, the applicant testified that he and his family members were traveling to Portland, Oregon for a few days of vacation. When a search of the trunk revealed a large amount of luggage, the immigration officers placed the family in secondary inspection. Given an opportunity to correct any misrepresentations, the applicant told the same story. Only after his daughter stated that she intended to fly to New Jersey to stay with a girlfriend in New Jersey until she returned to Canada to wed her Canadian fiancé did the applicant change his story to confirm that his daughter would be traveling to New Jersey to stay with a girlfriend. When questioned by immigration officers as to whether his daughter's fiancé lived in the United States, the applicant insisted that he lived in Canada. Upon further search of the vehicle, documentation in the luggage established that the applicant's daughter had been residing and working in New Jersey and that she lived with her fiancé in New Jersey. When confronted with this information the applicant admitted that he had prearranged with his family what to say at the port of entry because he knew that if he told the truth his daughter would not be allowed to enter the United States. He stated that he did not know that his daughter was working for pay in the United States, but admitted that he knew his daughter was living with her fiancé in New Jersey and was remaining in the United States past her authorized stay. On April 20, 2003, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225(b)(1). The applicant was returned to Canada where he has since resided. On September 1, 2005, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and 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 visit his lawful permanent resident son and U.S. citizen grandson.

The acting director determined that he did not have jurisdiction over the Form I-212 because the applicant resides abroad and denied the Form I-212 accordingly. *See Acting Director's Decision* dated January 3, 2006.

On appeal, counsel contends that the acting director has jurisdiction over the applicant's Form I-212 because the applicant is not applying for an immigrant visa and does not need to apply for a nonimmigrant visa abroad. Counsel contends that the applicant's positive factors outweigh the negative factors. *See Counsel's Brief*, dated February 23, 2006. In support of his contentions, counsel submits the referenced brief, Citizenship and Immigration Services (CIS) electronic instructions and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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.

- (ii) Other aliens.- Any alien not described in clause (i) who-
  - (I) has been ordered removed under section 240 or any other provision of law or
  - (II) departed the United States while an order of removal was outstanding

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date 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 Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

The record of proceedings indicates that the applicant was expeditiously removed from the United States in 2003. Therefore, the AAO finds that the applicant is clearly inadmissible under section 212(a)(9)(A)(i) of the Act and must receive permission to reapply for admission.

The AAO finds that the acting director correctly determined that he lacked jurisdiction over the applicant's Form I-212. He erred, however, in concluding that the applicant is required to submit his waiver request to a consular official at the time he applies for a nonimmigrant visa. The applicant is a Canadian citizen and does not require a visa to visit the United States. He is subject to the regulation at 8 C.F.R. § 212.2(f):

*Applicant for admission at port of entry.* Within five years of the deportation or removal . . . an alien may request permission at a port of entry to reapply for admission to the United States. **The alien shall file the Form I-212 with the district director having jurisdiction over the port of entry** [emphasis added].

Moreover, the regulation at 8 C.F.R. §103.2(a)(1) requires:

[E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed)

being hereby incorporated into the particular section of the regulations requiring its submission . . . .

Special instructions accompanying the Form I-212 direct individuals who will seek admission at a U.S. port of entry to submit the application to the "Local Office" having jurisdiction over that port. Accordingly, the applicant has not complied with the regulatory instructions for filing the Form I-212. In that the applicant has improperly filed the waiver application with the Nebraska Service Center, the acting director's decision will be affirmed. The application will be denied.

The AAO notes that the applicant previously sought admission to the United States at the Sumas, Washington port of entry. Jurisdiction over the Sumas port of entry lies with the District Director of the Citizenship and Immigration Services (CIS) office in Seattle, Washington. If the applicant wishes to enter the United States at a location other than Sumas, Washington, he will need to determine the CIS district office with jurisdiction over that location and submit the Form I-212 accordingly.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish his eligibility for the benefit sought. The applicant has not met this burden in the present case. The appeal will be dismissed.

ORDER: The appeal is dismissed. The acting director's decision is affirmed and the application is denied.