

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

HA

DEC 13 2007

FILE:

Office: VERMONT SERVICE CENTER

Date:

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) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 application for permission to reapply for admission after removal was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The applicant is a native and citizen of the Dominican Republic who attempted to enter the United States on November 7, 1998, by presenting a chemically altered passport and visa. On November 8, 1998, the applicant was expeditiously removed from the United States. The applicant is inadmissible to the United States under section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A). He now 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 reside with his lawful permanent resident mother.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being ordered removed under section 240 or any other provision of law and that the unfavorable factors in the applicant's case outweighed the favorable factors.¹ The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated June 5, 2006.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 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 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 aliens convicted of an aggravated felony) is inadmissible.

¹ The AAO notes that the applicant was ordered removed under section 235 of the Act; therefore, the applicant was inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), not section 212(a)(9)(A)(ii)(I) of the Act.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

A review of the record reflects that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant has been residing in the Dominican Republic since November 8, 1998, the date the applicant was expeditiously removed from the United States, which is more than the statutory 5 year period. The applicant no longer needs permission to reapply for admission after his removal. However, when the applicant applies for a visa in the Dominican Republic, he will be interviewed by a consular officer. Once the consular officer makes a determination on the applicant's admissibility, and if the applicant is found to be inadmissible based on his misrepresentation, the applicant may then file a Form I-601, if he decides to do so. If he has already been interviewed for his visa, he should contact the office where he was interviewed to determine what further actions he needs to take.

ORDER: The appeal is dismissed as moot as the applicant is no longer inadmissible.