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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE:



Office: DETRIOT, MI

Date:

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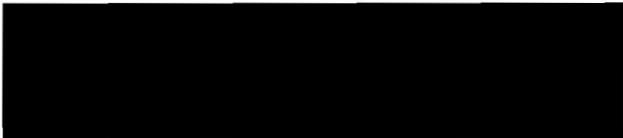
IN RE:



APPLICATION:

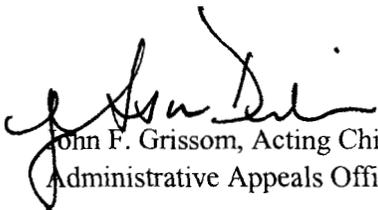
Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, Detroit, Michigan 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 Romania who, on September 14, 1990, was admitted to the United States as a nonimmigrant visitor. On September 20, 1990, the applicant filed a Request for Asylum in the United States (Form I-589). On August 8, 1994, the applicant's Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings. On November 30, 1995, the immigration judge granted the applicant voluntary departure until December 29, 1995. The applicant failed to surrender for removal or depart from the United States, thereby changing the grant of voluntary departure to a final order of removal. The applicant filed a motion to reopen with the immigration judge, which was denied on February 8, 1996. On September 9, 1996, a warrant for the applicant's removal was issued. The applicant filed a second motion to reopen with the immigration judge, which was denied on November 25, 1996. The applicant filed a third motion to reopen with the immigration judge, which was denied on January 13, 1999. The applicant filed an appeal of the denial of the motion to reopen with the Board of Immigration Appeals (BIA), which was dismissed on April 19, 2002. On December 16, 2002, the applicant's naturalized U.S. citizen daughter [REDACTED], filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on October 21, 2004. On April 11, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the Form I-130 filed on her behalf. On August 30, 2005, the Form I-485 was administratively closed. On November 30, 2005, a second warrant for the applicant's removal was issued. On December 18, 2006, the applicant was removed from the United States and returned to Romania, where she has since resided. On February 27, 2007, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 in the United States with her U.S. citizen daughter and lawful permanent resident daughter.

The field office director determined that no purpose would be served in adjudicating the Form I-212 because the applicant was also inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure. *See Field Office Director's Decision* dated August 24, 2007.

On appeal, the applicant's daughter contends that the applicant was ordered removed from the United States due to the incompetence of counsel. The applicant's daughter contends that the applicant does not have a place to live, employment or health insurance in Romania. *See Form I-290B*, dated September 21, 2007. In support of her contentions, the applicant's daughter submits the referenced Form I-290B 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 on a 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.

The AAO finds that the field office director erred in basing his denial of the applicant's Form I-212 on her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant's inadmissibility under 212(a)(9)(B)(i)(II) of the Act may be waived under section 212(a)(9)(B)(v) of the Act by filing an Application for Waiver of Ground of Inadmissibility (Form I-601). It is only appropriate to deny an applicant's Form I-212 without making a determination as to whether the applicant warrants a favorable exercise of discretion when the applicant is *mandatorily* inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964).

The applicant is inadmissible pursuant to sections 212(a)(9)(A)(ii) and 212(a)(9)(B)(i)(II) of the Act, for having been removed and for accruing more than one year of unlawful presence, from December 29, 1995, the date on which voluntary departure expired, until December 18, 2006, the date of her departure from the United States, and is seeking admission within ten years of that departure. To seek a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), an applicant must file a Form I-601.

The record indicates that the applicant has an approved Application for Action on an Approved Application or Petition (Form I-824) to initiate consular processing to obtain an immigrant visa to return to the United States. As required by 8 C.F.R. § 212.2(d), an immigrant visa applicant who is outside the United States and requires both a waiver and permission to reapply for admission must simultaneously file the Form I-601 and the Form I-212 with the U.S. Consulate having jurisdiction over the applicant's place of residence. As the applicant has not complied with the regulatory requirements for filing the Form I-212, the application in this matter was improperly filed. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.