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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

H4

PUBLIC COPY

[Redacted]

FILE:

Office: VERMONT SERVICE CENTER
(Relates)

Date: JUN 16 2008

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:

[Redacted]

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, Vermont Service Center denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The acting director's decision will be withdrawn and the matter remanded to the acting director for further consideration.

The applicant is a native of Bangladesh and a citizen of Guyana who was admitted to the United States as a lawful permanent resident on March 3, 1988. On February 23, 1994, the legacy Immigration and Naturalization Service (INS), denied his Form N-400, Application for Naturalization, based on his failure to reveal his criminal record at the time of his naturalization interview. *Decision of the District Director*, dated February 23, 1994. On February 24, 1995, legacy INS issued an order to show cause and a warrant for the applicant's arrest. The applicant was taken into custody, but subsequently released on bond and has remained in the United States. On May 12, 2005, the applicant's adult U.S. citizen daughter filed a Form I-130 on his behalf, which was approved on August 18, 2005.

The acting director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) for having committed a crime involving moral turpitude and had not filed the Form I-601, Application for Waiver of Ground of Inadmissibility, to seek a waiver of this inadmissibility. As the applicant had not filed the Form I-601, the acting director found that no purpose would be served in adjudicating the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal. She denied the application accordingly. *Acting Director's Decision* dated December 20, 2006.

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 Form I-212 filed by the applicant indicates that he is seeking permission to reapply for admission to the United States in connection with a 1995 removal. A review of the record, however, finds no evidence that would indicate that the applicant was removed or ordered removed from the United States in 1995 or at any other time. A check of related Citizenship and Immigration Services (CIS) data bases also finds no evidence that the applicant was ever the subject of removal proceedings. The AAO notes that if the applicant was not previously removed or ordered removed from the United States, he is not subject to the grounds of section 212(a)(9)(A) of the Act and is not required to file the Form I-212. Moreover, the AAO observes that the record appears to indicate that the applicant, who acquired lawful permanent residence in 1988, continues to hold this status. If the record accurately reflects the applicant's lawful permanent resident status, the acting director erred in finding him to be subject to the grounds of inadmissibility in section 212(a) of the Act and, therefore, required to submit either the Form I-601 or the Form I-212.

As the record is unclear as to whether the applicant was previously removed from the United States, the AAO will withdraw the acting director's decision and will remand the matter to her for further consideration. At that time, the acting director should also clarify the applicant's status to determine whether he is appropriately considered an applicant for admission in this matter.

ORDER: The acting director's decision is withdrawn and the matter will be remanded for further consideration in keeping with the above discussion.