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U.S. Department of Homeland Security  
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U.S. Citizenship  
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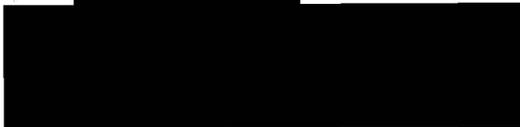


FILE:

Office: VERMONT SERVICE CENTER  
(RELATES)

Date: SEP 30 2008

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 Director, Vermont 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 The appeal will be dismissed, the previous decision of the director will be withdrawn and the application declared moot.

The applicant is a native and citizen of the Dominican Republic who, on September 28, 1992, was admitted to the United States as a conditional resident. On August 22, 1994, the applicant filed a Petition to Remove the Conditions on Residence (Form I-751). On February 2, 1995, the applicant's Form I-751 was denied and the applicant's conditional resident status was terminated (as of January 4, 1995) after his U.S. citizen spouse failed to appear for an interview. On the same date, the applicant was placed into immigration proceedings. On April 12, 1995, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States despite receiving proper notice that he had been ordered removed from the United States. On February 9, 2004, the applicant filed a Form I-212, which was approved on July 16, 2004

On December 1, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on an approved Form I-130, which was filed on his behalf by his naturalized U.S. citizen mother, [REDACTED]. On July 26, 2005, the applicant appeared at the Boston District Office. Immigration officers detained the applicant due to his prior removal order. On August 9, 2005, the applicant was released on an order of supervision. On August 27, 2005, the applicant departed the United States and returned to the Dominican Republic. On September 5, 2006, the applicant filed a second Form I-212. The applicant seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii).

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated May 8, 2007.

On appeal, counsel contends that the applicant is not permanently barred from admission due to termination of his conditional residence status. Counsel contends that the applicant did not receive proper notice of his immigration hearing, was not aware of his outstanding removal order and that he was not removed from the United States. Counsel contends that the director erred in finding that the approved Form I-212 was moot and abandoned by the applicant. Finally, counsel contends that the favorable factors in the applicant's case outweigh the negative factors. *See Written Statement in Support of Appeal*, received June 8, 2007. In support of his contentions, counsel submits the referenced written statement and copies of letters sent to immigration officers seeking the applicant's order of supervision. The entire record was reviewed in rendering a decision in this case.

Section 212(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.

- (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 record reflects that the applicant has an approved Form I-212 in regard to his 1995 removal order. The AAO finds that the director erred in concluding that the applicant had abandoned his Form I-212 or that the approved Form I-212 had become moot because the applicant departed the United States. As the applicant has already received permission to reapply for admission with regard to his 1995 removal order, his inadmissibility pursuant to section 212(a)(9)(A) of the Act has been waived. The AAO therefore finds that the applicant is not required to apply for permission to reapply for admission to the United States. Since the applicant does not require permission to reapply for admission, the appeal will be dismissed, the decision of the director will be withdrawn and the application for permission to reapply for admission will be declared moot.

The AAO notes that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien who accrued more than one year of unlawful presence in the United States, from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until August 27, 2005, the date on which he departed the United States, and is seeking admission within ten years of the date of his last 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 an Application for Waiver of Ground of Inadmissibility (Form I-601) at the time he applies for an immigrant visa.

**ORDER:** The appeal is dismissed, the prior decision of the director is withdrawn and the application for permission to reapply for admission is declared moot.