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

H4

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 1 4 2006

IN RE: Applicant: [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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared unnecessary.

The applicant is a native and citizen of the Dominican Republic, who on May 24, 2001, at the Miami, Florida, International Airport applied for admission into the United States. The applicant presented a photo-substituted passport with a photo-substituted nonimmigrant visa. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud, and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or other valid entry document. Consequently, on the same date, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. 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 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 travel to the United States and reside with his U.S. citizen spouse, child and step-children.

The Director determined that the applicant is not eligible for any exception or waiver under the Act and denied the Form I-212 accordingly. *See Director's Decision* dated January 7, 2005.

Section 212(a)(9)(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.
> >
> > (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.

On appeal, counsel states that the applicant has not reentered or attempted to reenter the United States since he was expeditiously removed. Counsel states that the United States address used on the Form I-212 was an inadvertent error and is in fact the applicant's spouse's address. Counsel submits documentation to prove the applicant's residence and employment in the Dominican Republic since his removal. Counsel further states that the applicant did not marry his U.S. citizen spouse for the sole purpose of obtaining immigration benefits. Counsel points out that the applicant and his spouse were married on April 15, 2000, they have a child

together and she and the applicant's child travel frequently to the Dominican Republic to visit the applicant. Counsel submits copies of their passports, and photographs of the applicant with his family in the Dominican Republic. Additionally, counsel states that the applicant's family members will suffer severe emotional and financial hardship if the applicant is not permitted to enter the United States. Finally, counsel states that the applicant has obeyed the order to remain outside the United States, has learned his lesson and has never again, or before that, violated the laws of this country.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

To recapitulate, the applicant was expeditiously removed from the United States on May 24, 2001. The record of proceedings does not reflect that the applicant re-entered the United States after his removal. Counsel, states that the applicant resides in the Dominical Republic and there is no documentary evidence to show otherwise. Based on the evidence submitted on appeal, the AAO finds that the applicant has been residing and working in the Dominican Republic since the date of his removal, May 24, 2001. It has now been more than five years since the applicant's date of removal. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act. Accordingly, the appeal will be dismissed and the Form I-212 will be declared unnecessary, as it has been established that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act.

The AAO notes that the applicant may be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for having attempted to gain entry into the United States by fraud. The proceeding in the present case is for the application for permission to reapply for admission into the United States after deportation or removal and therefore the AAO will not discuss the applicant's possible inadmissibility under other sections of the Act.

ORDER: The appeal is dismissed and the application is declared unnecessary.