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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

PUBLIC COPY

H4

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 19 2007

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.

Ellen C. Johnson

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 The previous decision of the director will be withdrawn and the appeal will be dismissed as the application is moot.

The applicant is a native and citizen of Russia who, on March 22, 2001, filed an Application for Asylum or Withholding of Removal (Form I-589). On May 2, 2001, the applicant's asylum application was referred to an immigration judge and the applicant was placed into proceedings. On May 2, 2005, the immigration judge granted the applicant voluntary departure until August 30, 2005. On August 27, 2005, the applicant left the United States and returned to Russia. On January 3, 2006, the applicant filed the Form I-212. The applicant seeks permission to reapply for admission into 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) in order to return to and reside in the United States with her naturalized U.S. citizen spouse and U.S. citizen daughter.

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 July 28, 2006.

On appeal, counsel contends that the director failed to consider a number of favorable factors in the applicant's case. Counsel contends that the director listed, as unfavorable, factors that are also positive factors in the applicant's case. Counsel contends that a weighing of the favorable and unfavorable factors in the applicant's case clearly establishes that the favorable factors outweigh the unfavorable factors. *See Attachment Form I-290B,* dated August 28, 2006. The Form I-290B indicated that counsel would submit a separate brief or evidence on appeal within 30 days. On September 7, 2007, the AAO informed counsel that he had five days in which to submit additional documentation to support the appeal. On September 12, 2007, counsel responded that a review of the file showed that the applicant's Form I-212 was filed in error because she does not require permission to reapply for admission. Counsel also submitted copies of documentation previously provided. The record is, therefore, considered complete. The entire record was reviewed in rendering a decision in this case.

The AAO finds that the applicant is not inadmissible under section 212(a)(9)(A) of the Act and she is, therefore, not required to receive permission to reapply for admission.

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.

A Departure Verification Form (Form I-146) and airline ticket stubs establish that the applicant departed the United States on August 27, 2005, prior to the expiration of her voluntary departure. Accordingly, the AAO finds that the applicant is not subject to a final order of removal, was not removed under an order of removal, did not depart the United States under an order of removal, and is, therefore, not inadmissible pursuant to section 212(a)(9)(A) of the Act.

As there is no evidence in the record that the applicant is subject to a final order of removal or has ever been removed from the United States 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 decision of the director will be withdrawn and the appeal will be dismissed as the application for permission to reapply for admission is moot.

ORDER: The decision of the director is withdrawn and the appeal is dismissed as the underlying application for permission to reapply for admission is moot.