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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: DETROIT, MI Date: DEC 02 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.

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 Lebanon who, on October 27, 2000, appeared in the Transit Without Visa (TWOV) lounge of the Miami International Airport and refused to board his continuing flight because he did not intend to continue his travel to Bolivia. The applicant was placed into secondary inspections where he admitted that he boarded the plane in Madrid, Spain with the intent to seek asylum in the United States and without the intent to continue travel through the United States and onto Bolivia as was indicated by his presentation of a Lebanese passport and ticket to Bolivia via Miami, Florida and Panama. The applicant's passport contained a counterfeit Bolivian visa. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to obtain admission to the United States by fraud and being an immigrant without valid documentation. The applicant was scheduled for a credible fear interview. On November 16, 2000, the applicant was placed into immigration proceedings pursuant to credible fear interview procedures. On December 10, 2002, the immigration judge denied the applicant's applications for asylum, withholding of removal and convention against torture and ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On February 1, 2003, the applicant married his then lawful permanent resident spouse, [redacted]. On April 23, 2003, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On February 20, 2004, [redacted] became a naturalized U.S. citizen. On April 5, 2004, the BIA affirmed the immigration judge's decision. On November 5, 2004, a warrant for the applicant's removal was issued. On June 9, 2005, the Form I-130 was approved. On June 29, 2005, the applicant departed the United States and returned to Lebanon, where he has since resided. On July 15, 2005, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). He 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 his U.S. citizen spouse and 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)(6)(C)(i) of the Act, for having attempted to enter the United States by fraud in 2000. *See Field Office Director's Decision* dated April 4, 2007.

On appeal, counsel contends that additional favorable factors exist in the applicant's case. *See Attachment Form I-290B,* dated May 3, 2007. In support of his contentions, counsel submits the referenced attachment, a letter from the applicant's spouse, a birth certificate for the applicant's daughter and a copy of [redacted] and the applicant's daughter's passports. 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.

Counsel asserts that the applicant voluntarily departed the United States in order to wait for consular processing of his immigrant visa on June 29, 2005, and has remained outside the United States since that date. Counsel asserts that the applicant has filed an Application for Waiver of Ground of Inadmissibility (Form I-601) with the U.S. Consulate in Beirut, Lebanon, in order to seek a waiver under section 212(i) of the Act. Counsel asserts that the applicant's fraud in connection with his entry is distinguishable and that the immigration judge, while he found the applicant did not have a well-founded fear of returning to Lebanon, found the applicant to be credible. The AAO notes that the immigration judge did not find the applicant to be credible in regard to his claim as to why he left Lebanon or his fear of returning to Lebanon. The AAO also finds that the evidence submitted by counsel on appeal does not establish that the applicant has filed a Form I-601 and Citizenship and Immigration Services (CIS) records do not reflect that such an application has been filed. However, the AAO finds the evidence of record sufficient to establish that the applicant has returned to Lebanon and is waiting consular processing of his immigrant visa.

The AAO also finds the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, as an alien who has accumulated more than one year of unlawful presence, from April 5, 2005, the date on which the BIA affirmed the immigration judge's finding, until June 29, 2005, the date of his 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 also file an Application for Waiver of Ground of Inadmissibility (Form I-601).

The record indicates that the applicant has initiated consular processing in Lebanon 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.