U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: COLUMBUS, OH Date: AUG 10 2009
RELATES)

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: Self-represented

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Columbus, Ohio, denied an 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 Pakistan who, on August 7, 1989, was placed into immigration proceedings after violating her nonimmigrant student status by failing to remain enrolled in school and working without employment authorization. On December 7, 1989, the immigration judge granted the applicant voluntary departure until July 1, 1990. The applicant waived her appellate rights. The applicant's voluntary departure was extended until August 15, 1990. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On July 31, 1990, a warrant for the applicant's removal was issued.

On March 25, 1994, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed on her behalf by her naturalized U.S. citizen spouse. On May 26, 1994, the Form I-130 and Form I-485 were approved and the applicant was admitted to the United States as a lawful permanent resident. On September 6, 1994, a Notice of Intent to Rescind was issued in regard to the applicant's admission as a lawful permanent resident because she had failed to apply for permission to reapply for admission. On November 16, 1994, the applicant filed a Form I-212. On November 30, 1994, the applicant's lawful permanent residence was rescinded. On March 14, 1995, the Form I-212 was approved. On October 21, 1996, the applicant's spouse filed a second Form I-130 on the applicant's behalf. On May 2, 1997, the second Form I-130 was approved. On October 10, 1997, the applicant filed a motion to reopen with the immigration judge. On March 4, 1998, the immigration judge denied the applicant's motion to reopen. The applicant appealed the denial of the motion to reopen with the Board of Immigration Appeals (BIA). On May 3, 2002, the BIA denied the applicant's motion to reopen. The applicant filed a petition for review with the Fifth Circuit Court of Appeals (Fifth Circuit). On September 27, 2002, the approvals of the Form I-212 and Form I-130 were rescinded. On November 4, 2003, the Fifth Circuit's denial of the applicant's petition for review was mandated.

On December 8, 2003, the applicant's spouse filed a third Form I-130 on the applicant's behalf. On October 19, 2005, the Form I-130 was approved. On February 24, 2006, the applicant filed a second motion to reopen with the BIA. On March 7, 2006, the applicant was removed from the United States and returned to Pakistan. On March 28, 2006, the BIA denied the applicant's motion to reopen.

On August 31, 2006, the applicant filed a Form I-212, indicating that she resided in Pakistan. On November 18, 2006, the Form I-212 was denied. On December 23, 2008, the applicant filed another Form I-212, indicating that she resided in Pakistan. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 her naturalized U.S. citizen spouse and two U.S. citizen children.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated February 27, 2009.

On appeal, the applicant's spouse contends that the denial has affected his family emotionally, physically, mentally and socially. *See Letter Accompanying Form I-290B.* In support of his contentions, the applicant's spouse submits the referenced letter and copies of medical documentation.[1] 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.-
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> > (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.
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> > (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.
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> (C) Aliens unlawfully present after previous immigration violations.-
>
> > (i) In general.-Any alien who-
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> > > (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

[1] The AAO notes that the medical documentation submitted on appeal is unclear as to diagnosis and that the applicant may wish to submit more thorough and clear documentation when reapplying with the U.S. Consulate.

> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—
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> (1) the alien's having been battered or subjected to extreme cruelty; and
>
> (2) the alien's--
>
> (A) removal;
>
> (B) departure from the United States;
>
> (C) reentry or reentries into the United States; or
>
> (D) attempted reentry into the United States.

The applicant's spouse asserts that the applicant has remained outside the United States and lived in Pakistan since she was removed on March 7, 2006.[2]

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing more than one year of unlawful presence, from April 1, 1997, the date on which the unlawful presence provisions were enacted, until March 7, 2006, the date on which the applicant departed the United States, and she is seeking admission within ten years

[2] The Form I-212 indicates that the applicant resides in Pakistan. The AAO finds that mere statements are insufficient to establish that the applicant has remained outside the United States. The applicant is required to show proof that she has resided outside the United States since her 2006 removal at the time of her immigrant visa interview. If the documentation satisfies U.S. Consulate personnel that she has remained outside the United States since her 2006 removal, the applicant will be eligible to file for permission to reapply for admission. If it is later confirmed that the applicant illegally reentered the United States *at any time* after her 2006 departure, she is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is ineligible for permission to reapply for admission until she has remained outside the United States for a period of ten years. *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006) and *Gonzales v. DHS* (*Gonzales II*), 508 F.3d 1227 (9th Cir. 2007).

of her last departure. To seek a waiver of this ground 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 Grounds of Inadmissibility (Form I-601).

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.