

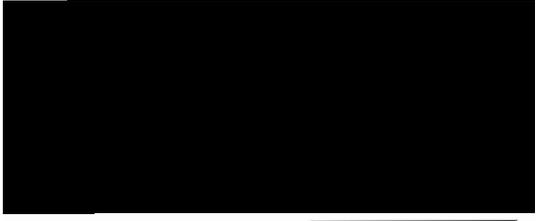
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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MAY 06 2009

FILE:



Office: DALLAS, TX

Date:

RELATES)

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.

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, Dallas, Texas, 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 of India and citizen of Australia who, on August 13, 1993, appeared at the Los Angeles International Airport. The applicant presented his Australian passport, which contained a nonimmigrant visa. The applicant appeared to match an arrest warrant in Los Angeles county and was denied admission as a nonimmigrant. On August 15, 1993, the applicant was paroled into the United States for the purpose of attending criminal proceedings. The applicant claimed that the arrest warrant pertained to someone who had stolen his identity and committed the crime while he was in Australia. The applicant's parole was extended until February 1, 1994. The applicant failed to depart the United States. On March 3, 1997, the applicant married a U.S. citizen, [REDACTED], in Beeville, Texas. On April 2, 1997, 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 his behalf by [REDACTED]. On August 2, 2000, the Form I-130 was denied because the applicant had ceased to reside with [REDACTED] in March 1998 and had subsequently divorced [REDACTED] on November 5, 1998. On August 2, 2000, the applicant was placed into immigration proceedings. On October 31, 2000, the immigration judge ordered the applicant removed from the United States *in absentia*. The applicant failed to depart the United States. On April 7, 2003, the applicant was removed from the United States and returned to Australia, where he claims to have since resided.

On May 28, 2006, the applicant married his current U.S. citizen spouse, [REDACTED] in Penhurst, New South Wales, Australia. On June 28, 2006, [REDACTED] filed a Form I-130 on behalf of the applicant, which was approved on January 9, 2007. On May 31, 2007, the applicant filed the Form I-212, indicating that he resided in Australia. 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). 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 current U.S. citizen spouse.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The field office director determined that the applicant was not eligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated September 28, 2007.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i) of the Act because he has not reentered the United States. *See Counsel's Motion*, dated October 31, 2007. In support of his contentions, counsel submits only the referenced motion. 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.

(C) Aliens unlawfully present after previous immigration violations.-

- (i) In general.-Any alien who-
 - (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
 - (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—

- (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 AAO finds that the field office director incorrectly found the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i) of the Act because there is no evidence in the record to support a finding that the applicant has reentered the United States. The applicant and counsel, by indicating on the Form I-212 that the applicant resides in Australia, assert that the applicant has remained outside the United States and lived in Australia since he was removed on April 7, 2003.¹

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 being unlawfully present in the United States for more than one year, from October 31, 2000, the date on which the immigration judge ordered the applicant removed, and April 7, 2003, the date on which he departed the United States, and is seeking admission within ten years 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).

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.

¹ The AAO notes that if it is later confirmed that the applicant illegally reentered the United States at any time after his 2003 removal, he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is ineligible for permission to reapply for admission until he 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).