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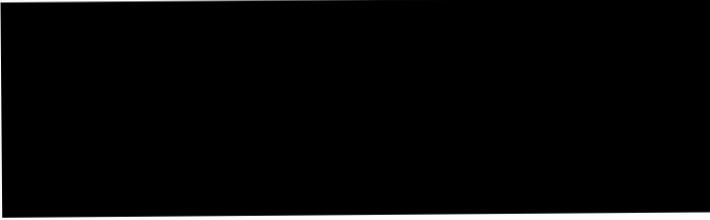
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW DELHI, INDIA

Date: NOV 05 2009

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 or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) was denied by the Field Office Director, New Delhi, India and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of 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 remain in the United States and reside with his naturalized U.S. citizen spouse and their U.S. citizen children.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The Field Office Director found that the applicant had failed to overcome the grounds of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act and thus denied the Form I-212 as a matter of discretion, as its approval would have served no purpose. *Decision of the Field Office Director*, dated February 12, 2007.

On appeal, counsel for the applicant indicates that the applicant believes that she is suffering severe hardship. Counsel also indicates that additional evidence will be submitted. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*. As the additional materials referenced by counsel are not found in the record as of the date of this review, the AAO considers the record to be complete.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(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 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 of an aliens 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.

The AAO has, in a separate decision, dismissed the applicant's appeal of the denial of the Form I-601, which the applicant filed in relation to his inadmissibility for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act. When an inadmissible alien files both the Form I-601 and the Form I-212, the *Adjudicator's Field Manual* provides the following guidance:

Chapter 43 Consent to Reapply After Deportation or Removal

43.2 Adjudication Processes:

(c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

In that the AAO has determined that the applicant is not eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act and has dismissed his appeal of the Form I-601 denial, no purpose would be served in granting his application for permission to reapply for admission. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.