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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
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FILE:



Office: ROME, ITALY

Date:

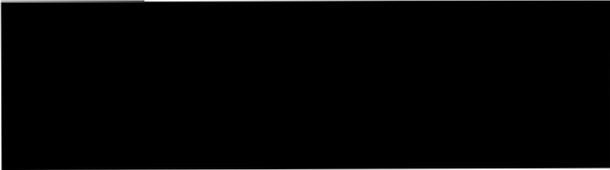
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IN RE:



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 District Director, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be returned to the District Director for action consistent with this decision.

The applicant is a native and citizen of Pakistan 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 in order to remain in the United States and reside with his U.S. citizen spouse.

The District Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation and 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 District Director found that the applicant had failed to overcome these grounds of inadmissibility and thus denied the Form I-212 as a matter of discretion, as its approval would have served no purpose. *Decision of the District Director*, dated February 7, 2007.

On appeal, counsel for the applicant asserts that the District Director erred in finding that the applicant does not merit a favorable exercise of discretion. *Form I-290B; Attorney's statement*, dated March 28, 2007.

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 notes that as the applicant's Form I-601 has been denied, no purpose would be served in considering the applicant's Form I-212 on appeal. However, the applicant's appeal of the District Director's denial of his Form I-601, Application for Waiver of Grounds of Inadmissibility, although rejected as untimely filed, has been returned to the District Director for consideration as a motion to reopen and the issuance of a new decision. In that the District Director denied the applicant's Form I-212 as a matter of discretion, basing his decision solely on the denial of the Form I-601, the Form I-212 will also be returned to the District Director for adjudication on its merits should the applicant's Form I-601 be approved on motion.

ORDER: The matter will be returned to the District Director for further processing in the event that the applicant's Form I-601 is approved on motion.