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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

[redacted]

H4

FILE: [redacted] Office: ACCRA, GHANA Date: NOV 23 2010

IN RE: Applicant: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Accra, Ghana, 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 Ghana who, on November 11, 1992, appeared at John F. Kennedy International Airport. The applicant did not have any valid documentation to enter the United States and requested asylum in the United States. On the same day, the applicant was placed into immigration proceedings. On March 21, 1994, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States. On July 15, 1996, the applicant filed a motion to reopen immigration proceedings with the immigration judge. On September 25, 1996, the immigration judge denied the applicant's motion to reopen. On March 12, 2004, the applicant was removed from the United States and returned to Ghana where he claims to have since resided.

On September 3, 2008, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212 indicating that he resides in Ghana. On June 16, 2008, the Form I-212 and Form I-601 were denied. The applicant is inadmissible under 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 reside in the United States with his current naturalized U.S. citizen spouse.

The field office director determined 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 having accrued more than one year of unlawful presence and seeking admission within ten years of his last departure. The field office director determined that the applicant was not eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated June 16, 2008.

Counsel contends that the field office director violated due process when he failed to adjudicate the application on its merits because the Form I-601 was denied. *See Forms I-290B,* dated July 11, 2008. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In General - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
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> . . . .
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is

> the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In a separate proceeding, the field office director found the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act and ineligible for a waiver pursuant to section 212(a)(9)(B)(v) of the Act. *See Field Office Director's Decision on Form I-601,* June 16, 2008. The AAO subsequently dismissed an appeal of the denial of the Form I-601.

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

In that the field office director and the AAO have found the applicant to be ineligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Accordingly, the appeal of the field office director's denial of the Form I-212 will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.