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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H4

Date: APR 25 2012 Office: VIENNA, AUSTRIA



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:

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.

Thank you,

Perry Rife
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, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the Field Office Director will be withdrawn as the applicant is not inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, the application will be declared moot, and the appeal will be dismissed.

The applicant is a native and citizen of Albania who was found inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), after being removed from the United States. He now 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 U.S. citizen spouse and child.

The Field Office Director determined that the applicant is inadmissible to the United States and after denying the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, she denied the Form I-212 accordingly. *Decision of the Field Office Director*, dated May 3, 2010.¹

In the present case, the record indicates that on February 2, 2007, the applicant attempted to enter the United States under the Visa Waiver Program, by presenting an Italian passport in someone else's name. On September 7, 2007, the applicant was removed to Albania after withdrawing his application for asylum.

8 C.F.R. § 217.4 provides, in pertinent part, that:

(a) *Determinations of inadmissibility.*

- (1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one of more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act and applies for asylum in the United States must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

¹ The AAO notes that on June 21, 2010, the Vienna, Austria office erroneously stated that in order to process the applicant's Form I-601 appeal, the applicant also must submit an appeal of his Form I-212 denial; therefore, the applicant's appeal of his Form I-212 dated July 8, 2010 is accepted as timely.

. . . .
(3) Refusal of admission under paragraph (a)(1) of the section shall not constitute removal for purposes of the Act.

The record establishes that the applicant was refused admission to the United States after attempting to enter under the Visa Waiver Program. Therefore, the AAO finds that pursuant to 8 C.F.R. § 217.4(a)(3), the applicant is not inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Act. As such, the issue of whether the applicant has established eligibility for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act is moot and need not be addressed.

ORDER: The decision of the Field Office Director is withdrawn as the applicant is not inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, the application is declared moot, and the appeal is dismissed.