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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

[redacted]

Date: AUG 0 2 2012

Office: SAN ANTONIO

FILE: [redacted]

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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of Nigeria who entered the United States with a valid immigrant visa in October 2000. As a result of being convicted in July 2006 in the Circuit Court of Duval County, Florida for the offense of Child Abuse, the applicant was granted Voluntary Departure until July 20, 2007 with an alternate order of removal. *See Order of the Immigration Judge,* dated March 22, 2007. A motion to reopen was dismissed on November 16, 2007 and a subsequent appeal was dismissed by the Board of Immigration Appeals on January 31, 2008. The applicant was removed from the United States in January 2008. *See Warrant of Removal/Deportation.* The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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 mother.

The Field Office Director determined that the applicant had failed to establish any favorable factors in his application and thus, there was no other option but to deny the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). *See Field Office Director's Decision,* dated May 27, 2011

On appeal, the applicant's U.S. citizen mother submits a statement, dated June 17, 2011. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 or removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure…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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212:

> The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

The favorable factors in this matter are the applicant's residence in the United States for over eight year and the presence of his U.S. citizen mother. The unfavorable factors are the applicant's removal from the United States, the applicant's multiple arrests and convictions between 2003 and 2006, most notably, his conviction in 2006 for Child Abuse, numerous disciplinary incidents while in custody, and the absence of an approved visa petition on his behalf.[1]

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones. Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the applicant's Form I-212 appeal will be dismissed.

ORDER: The applicant's Form I-212 appeal is dismissed, and the application is denied.

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[1] The AAO notes that a Petition for Alien Relative (Form I-130) was filed on behalf of the applicant by his U.S. citizen mother in March 2009. The Form I-130 contains no date and/or fee stamp to indicate receipt by the USCIS. The Form I-130 remains unadjudicated at this time. The ability of the applicant to apply for an immigrant visa and admission to the United States as an immigrant would be based on an approved Form I-130. In the absence of an approved Form I-130, no application for admission is currently possible.