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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: MAY 0 1 2012 OFFICE: BOSTON, MA FILE: [redacted]

IN RE: [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:

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 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 Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Field Office Director, Boston, Massachusetts, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Pakistan and a citizen of Canada who was admitted into the United States on August 22, 2002 with a nonimmigrant visitor visa valid for six months. The applicant was ordered removed on July 18, 2003 for remaining unlawfully in the United States beyond the six months authorized by his visa. On this basis, the applicant was found to be inadmissible 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). He seeks permission to reapply for admission into the United States after removal, pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The applicant is married to a U.S. citizen, and a Form I-130, Petition for Alien Relative (Form I-130) was filed on his behalf and approved on November 23, 2010. The Form I-130 approval was revoked by USCIS on September 15, 2011, however, based on a finding that the applicant had entered into a fraudulent marriage with his first U.S. citizen spouse, and that he was therefore prohibited from having a visa petition approved on his behalf under section 204(c) of the Act, 8 U.S.C. § 1154(c).

In a decision dated September 15, 2011, the director determined that the applicant had no underlying means of admission into the United States, and that approval of a Form I-212 would therefore serve no purpose. The Form I-212 was denied accordingly.[1]

On appeal, the applicant contests that his first marriage was fraudulent, and he indicates that his Form I-130 should not have been revoked. He asserts further that his wife and child are experiencing extreme hardship due to his inadmissibility. In support of his assertions, the applicant submits a copy of an appeal brief submitted to the Board of Immigration Appeals (BIA) relating to his Form I-130 revocation, a hardship statement, financial and medical documents, and photographs.[2]

The AAO lacks jurisdiction to review the director's decision revoking the Form I-130 petition. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction only over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). The BIA within the U.S. Department of Justice has jurisdiction over alien relative petitions filed under section 204(a)(1)(A)(i) of the Act. 8 C.F.R. § 1003.1(b)(5).

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the BIA, along with a copy of this [illegible]

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

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(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 who 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 alien 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 Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant was ordered removed from the United States on July 18, 2003. The applicant is therefore inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act and he requires permission to reapply for admission into the United States, as set forth in section 212(a)(9)(A)(iii) of the Act.

In the present case, however, the record reflects that the Form I-130 filed on the applicant's behalf has been revoked pursuant to section 204(c) of the Act.[3] In the absence of an approved I-130 petition, the applicant is not entitled to apply for adjustment of status, and his application for adjustment cannot be approved regardless of whether he obtains permission to reapply for

[3] Section 204(c) of the Act states that:

> [N]o petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

admission. Because the applicant has no underlying means of admission into the United States, no purpose would be served in adjudicating his Form I-212. The appeal shall therefore be dismissed.

ORDER: The appeal is dismissed.