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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue N.W.
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: MAY 24 2012 OFFICE: HOUSTON, TEXAS 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:

[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 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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Houston, Texas. The applicant appealed the Field Office Director's decision to the Administrative Appeals Office (AAO). On appeal, the AAO withdrew the Field Office Director's decision and remanded the application for entry of a new decision. The Field Office Director denied the application as a matter of discretion and certified the denial to the AAO. The denial will be affirmed.

The applicant is a native and citizen of Colombia who entered the United States without inspection in November 1992. On October 19, 1995, the applicant married [redacted] (Ms. Singleton), a U.S. citizen, in Houston, Texas. On January 20, 1998, Ms. Singleton filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was denied on July 14, 1999. On April 25, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a second Form I-130 filed on his behalf by Ms. Singleton. In February 2004, the Form I-130 and Form I-485 were withdrawn based on a January 7, 2004 request for withdrawal by Ms. Singleton.[1] On April 14, 2004, the applicant was placed into immigration proceedings for having entered the United States without inspection in November 1992. On January 20, 2005, the immigration judge denied the applicant's application for withholding of removal. The immigration judge granted the applicant voluntary departure until March 21, 2005. The applicant filed an appeal with the Board of Immigration Appeals (BIA). The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On May 10, 2006, the BIA dismissed the applicant's appeal, found that the applicant failed to post voluntary departure bond and held that the applicant's voluntary departure order had converted to an order of removal by operation of law.

In June 2009, the applicant filed the Form I-212 indicating that he continued to reside in the United States. 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 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 as a lawful permanent resident.

The field office director determined that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for seeking admission within ten years of his last departure after having accrued more than one year of unlawful presence in the United States. The field office director determined that the applicant was required to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) and a Form I-212 simultaneously with the U.S. Consulate abroad. The field office director determined that the Form I-212 could not be approved where other grounds of inadmissibility exist and no purpose would be served in adjudicating the Form I-212. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated February 4, 2010.

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[1] In the Acceptance of Withdrawal letters, the District Director noted that "acceptance of your withdrawal does not mitigate the Service's findings that your marriage to [redacted] was entered into for the purpose of circumventing immigration laws...." *Acceptance of Withdrawal of Application for Permanent Residence,* dated February 14, 2004 and *Acceptance of Withdrawal of Petition for Alien Relative,* dated February 13, 2004.

On appeal, the AAO found that the Field Office Director erred in determining that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and that the applicant was required to file the Form I-601 and the Form I-212 with the U.S. Consulate abroad. The AAO withdrew the Field Office Director's decision accordingly, and remanded the Form I-212 to the Field Office Director for proper adjudication. *See Decision of the AAO*, dated February 2, 2011.

The Field Office Director found that the applicant remains subject to an outstanding order of removal and that the applicant's departure from the United States would result in the applicant's inadmissibility under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The Field Office Director determined that the applicant did not merit a favorable exercise of discretion as the favorable factors in support of his application for permission to reapply for admission did not outweigh the negative factors. The Field Office Director denied the Form I-212 accordingly and certified the case to the AAO. *See Decision of the Field Office Director*, dated November 29, 2011.

The record includes, but is not limited to: briefs from current and previous counsel; identity and financial documents; criminal records; country conditions information; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (A) Certain aliens previously removed.-
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> (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.
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> (ii) Other aliens.-Any alien not described in clause (i) who-
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> (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,
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> 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 January 20, 2005. The applicant's removal order will; therefore, render him inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act upon his departure from the United States, and he will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant may apply for conditional approval of Form I-212 under 8 C.F.R. § 212.2(j) before departing the United States, notwithstanding his ineligibility for adjustment of status. *See Instructions for Form I-212.* The approval of the Form I-212 under these circumstances is conditioned upon the applicant's departure from the United States, and the Field Office with jurisdiction over the applicant's place of residence has jurisdiction over the application, irrespective of whether a waiver under section 212(g), (h),(i), or 212(a)(9)(B)(v) is needed.[2] *See Instructions for Form I-212, Appendix I.*

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 for almost 20 years, the passage of more than 11 years since his criminal conviction and the filing of income taxes and insuring his automobile. The unfavorable factors are the applicant's entry without inspection in 1992, the deportation order issued in 2005, the failure to depart pursuant to the voluntary departure order, the finding by USCIS that the applicant entered into marriage with Pamela Marie Riascos (nee Singleton) for the purpose of circumventing immigration laws, the applicant's conviction for Displaying Fictitious or Counterfeit Inspection Certificate on September 7, 2000, the absence of

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[2] The AAO notes that the applicant, upon departure from the United States, will have accrued over a year of unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until the date of the applicant's departure. As such, the applicant will be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). In order to seek a waiver of inadmissibility, the applicant will be required to file a Form I-601 waiver application pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), together with his application for an immigrant visa.

an approved visa petition on his behalf,[3] and periods of unauthorized presence and employment in the United States.

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.

[3] The AAO notes that a Petition for Alien Relative (Form I-130) filed on behalf of the applicant by Takeia Tonnette Anderson was receipted by USCIS on December 16, 2011 but remains unadjudicated at this time.