



U.S. Citizenship
and Immigration
Services



H4

Date: **NOV 07 2012** Office: PANAMA CITY, PANAMA FILE:

IN RE: Applicant:

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.

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, or a request for a fee waiver. 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 waiver application was denied by the Field Office Director, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia who was removed from the United States in 2008, after having failed to abide by a voluntary departure order of an immigration judge entered against her in 1996. The applicant is the beneficiary of an approved petition for alien relative filed on her behalf by her U.S. citizen husband, but she was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is also inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), as an alien ordered deported who seeks admission within 10 years of her departure. The applicant 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).

The field office director determined that the applicant was inadmissible to the United States and, since her application for a waiver of inadmissibility was denied, no purpose would be served in granting her permission to reapply for admission.¹ The applicant's application for permission to reapply for admission after deportation was accordingly denied. On appeal, the applicant, through counsel, claims that she should be permitted to reapply for admission in the exercise of discretion. See Appeal Brief.

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

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

(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.

¹ The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied by the field office director. The AAO dismissed the applicant's appeal of the denial.

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.

As noted above, the field office director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(B)(ii) of the Act, and ineligible for a waiver of inadmissibility. We dismissed the applicant's appeal of the denial of her waiver application.

Having found the applicant to be inadmissible to the United States, and ineligible for a waiver of inadmissibility, the Form I-212 was properly denied by the director. The AAO therefore affirms the decision of the director.

The burden of proving eligibility in these proceedings remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.