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

[redacted]

H4

DATE: OCT 12 2012 Office: Panama City File: [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Permission to Reapply for Admission 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:

[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.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission 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 sustained.

The applicant is a native and citizen of Pakistan, who entered the United States without inspection in September 1991. In 1996, he married a U.S. citizen who filed a spousal Petition for Alien Relative (Form I-130). He divorced the petitioner in June 2002 and remarried another U.S. citizen in October 2002 who also filed a Form I-130 for the applicant in October 2003. Meanwhile, based on an approved Immigrant Petition for Alien Worker (Form I-140), the applicant sought employment-based adjustment of status in 2000. The adjustment application was denied on April 28, 2003 for fraud and a Notice to Appear was issued on July 24, 2003. After the applicant left the country on September 13, 2003, an Immigration Judge ordered him removed in absentia. The applicant sought an immigrant visa as the beneficiary of the second spousal Petition for Alien Relative (Form I-130).

A Consular Officer found the applicant inadmissible to the United States under sections 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 unlawful presence of one year or more after April 1, 1997, and 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), based on the removal order.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), and thus also denied as a matter of discretion the Application for Permission to Reapply for Admission Into the United States after Deportation or Removal (Form I-212). *Decision of Field Office Director,* January 13, 2011.

On appeal, counsel for the applicant contends USCIS misapplied the legal standard for extreme hardship. In support of the appeal, counsel asserts that a qualifying relative's life would be disrupted with regards to raising a family if her husband were not present. The record contains documentation submitted in support of the waiver requests, request for permission to reapply for admission, family- and employment-based adjustment applications, and their respective decisions, as well as consular notifications, notices to appear, and orders of the Immigration Judge. The entire record was reviewed and considered in rendering this decision.

The AAO notes that the field office director denied the applicant's Form I-212 in the same decision as a matter of discretion based on the denial of the Form I-601, and that the applicant filed a Notice of Appeal or Motion (Form I-290B) for each denial. As the AAO has separately found the applicant eligible for a waiver of inadmissibility under section 212(i) of the Act, it will withdraw the field office director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) provides, pertinent part:

> (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 5 years of the date of such removal ... 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 ... 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 Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

On December 10, 2003, an Immigration Judge ordered the applicant removed from the United States. Having already left the country on September 13, 2003, the applicant did not attend the removal proceeding, and the removal order was entered in absentia. He is, therefore, inadmissible under section 212(a)(9)(A)(ii) of the Act and must obtain permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility and for consent to reapply for admission, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The denial is withdrawn and the application for permission to reapply granted.