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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: DEC 1 6 2013 Office: SEATTLE, WA [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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The 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, Seattle, Washington. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Act as an alien previously removed from the United States, and section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks permission to reenter the United States in order to reside with his wife and children in the United States.

The field office director found that the applicant is ineligible for any relief under the Act. Specifically, the field office director found that the applicant did not remain outside of the United States for twenty years after being removed from the United States in 1999, entering the United States in 2000, and being removed a second time in 2011 after the removal order was reinstated. The field office director denied the application accordingly.

On appeal, counsel contends the decision of the field office director misstates facts in the record, misstates the law, and ignores substantial evidence of extreme hardship. Counsel submits additional evidence of hardship on appeal.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). In this case, new evidence shows that the applicant is currently ineligible to apply for permission to reapply for admission into the United States.

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

....

(C) Aliens unlawfully present after previous immigration violations. -

(i) In general. - Any alien who -

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

> and who enters or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) Exception. - Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.
>
> (iii) Waiver. - The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--
>
> > (I) the alien's battering or subjection to extreme cruelty; and
> >
> > (II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006); *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez,* 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, the BIA has held that it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission.

Here, the record shows that the applicant attempted to enter the United States without inspection on December 11, 2013, and was detained by immigration officials. *Record of Deportable/Inadmissible Alien (Form I-213)*, dated December 11, 2013. Therefore, because the applicant attempted to enter the United States without being admitted, after he had twice been previously removed, he is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act. An alien inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply until he has been outside the United States for more than ten years since the date of his last departure from the United States. Here, the applicant remains in custody pending a reinstatement of his prior removal order. He will remain statutorily ineligible to apply for permission to reapply for admission until ten years after he departs the United States. Accordingly, the appeal must be dismissed.

Because the applicant is mandatorily inadmissible under section 212(a)(9)(C) of the Act and no waiver is available to an alien who has not remained outside the United States for ten years, no

purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.