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

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 20 2013 OFFICE: VIENNA, AUSTRIA 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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Vienna, Austria, denied the application for permission to reapply for admission into the United States, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of and citizen of Poland who was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed from the United States and seeking admission within the proscribed period since the date of removal. The applicant, through counsel, does not contest this finding of inadmissibility. Rather, she 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 with her mother and children in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on the applicant's parent and denied the Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision as the applicant's Form I-601 application for a waiver of indamissibility. *See Decision of the Field Office Director*, dated September 23, 2011.

On appeal, counsel for the applicant asserts that the U.S. Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application as USCIS failed to conduct a thorough evaluation of the documentary evidence and statements that demonstrate the hardship that the applicant's U.S. citizen mother would suffer because of the applicant's inadmissibility. *See Notice of Appeal or Motion* (Form I-290B), dated October 14, 2011.

The record includes, but is not limited to: briefs from counsel; statements from the applicant, and her mother; letters of support; identity, psychological, medical, employment, and financial documents; photographs; and country condition information. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (A) Certain aliens previously removed.-
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> ...
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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
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> ...
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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 Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

The record reflects that the applicant was admitted to the United States on December 21, 1986 as a B-2 visitor for pleasure, and received authorization to remain for a maximum period of 6 months. The applicant filed an application for asylum on February 26, 1988. The applicant's asylum case was denied by an Immigration Judge on March 4, 1998 and she was then granted voluntary departure until September 1, 1998. An appeal of the decision was dismissed on June 13, 2000 by the Board of Immigration Appeals. The applicant then filed a Petition for Review with the U.S Seventh Circuit District Court of Appeals, which was later dismissed on September 1, 2000. The applicant did not depart the United States voluntarily after her Petition for Review was dismissed, turning her grant of voluntary departure into an order of removal. The applicant was removed on January 8, 2010, and the record reflects she has remained outside the United States to date. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

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. In a separate decision the AAO dismissed her appeal of the denial of her application for a waiver under section 212(a)(9)(B)(v) of the Act. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and no waiver has been approved, no purpose would be served in approving the applicant's Form I-212.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish that he is eligible for the benefit being 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. Hence, the appeal will be dismissed.

ORDER: The appeal is dismissed.