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

DATE: JAN 0 4 2013 Office: LIMA, PERU 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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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. 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 application for permission to reapply for admission after removal was denied by the Field Office Director, Lima, Peru. 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 Chile who was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(II), for having been ordered removed. 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 in the United States with her U.S. citizen spouse.

The field office director found that as the applicant's Form I-601 was denied, the applicant's Form I-212 should be denied as no purpose would be served in granting it. *Field Office Director's Decision*, dated June 28, 2012.

On appeal, counsel details the applicant's positive and negative discretionary factors. *Form I-290*, received July 23, 2012.

The record includes, but is not limited to, counsel's brief; statements from the applicant, her spouse and her in-laws; and medical records. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant entered the United States with a B-2 visa on September 5, 1999; she did not receive an extension of her visitor status; she was placed in removal proceedings; she was ordered removed on June 4, 2007; and she was removed from the United States on August 17, 2007. The AAO finds that the applicant is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act and, therefore, must receive permission to reapply for admission.

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.
> >
> > (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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case on a 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 Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The AAO has, in a separate decision, dismissed the applicant's appeal of the denial of the Form I-601, which the applicant filed in relation to her inadmissibility for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act. When an inadmissible alien files both the Form I-601 and the Form I-212, the *Adjudicator's Field Manual* provides the following guidance:

> Chapter 43 Consent to Reapply After Deportation or Removal
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> 43.2 Adjudication Processes:
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> (d) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

In that the AAO has determined that the applicant is not eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act and has dismissed her appeal of the Form I-601 denial, no purpose would be served in considering her application for permission to reapply for admission. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). Accordingly, the appeal of the field office director's denial of the Form I-212 is dismissed as a matter of discretion.

ORDER: The appeal is dismissed.