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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 25 2013 OFFICE: ROME, ITALY FILE:

IN RE:

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 with the field office or service center that originally decided your case by filing a 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,

Michael Shumway

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Rome, Italy denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Nigeria who last entered the United States under the Visa Waiver Program on June 9, 2001, using a British passport that did not belong to him and remained after his authorized period of stay ended on September 7, 2001. The applicant was removed from the United States on February 27, 2004. He 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.

The Acting Field Office Director denied the Form I-212 as a matter of discretion based on her denial of the applicant's Form I-601, Application for Waiver of Ground of Inadmissibility. *Decision of the Field Office Director,* dated August 25, 2011.

On appeal, the applicant asserts that United States Citizenship and Immigration Services (USCIS) erred in its denial of the Form I-601 and, therefore, also erred in denying the Form I-212. *Notice of Appeal or Motion*, dated August 25, 2011.

Section 212(a)(9)(A) of the Act states in pertinent 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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> (II) departed the United States while an order of removal was outstanding, and 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 aliens 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, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

The applicant was removed from the United States on February 27, 2004 under section 237 of the Act as a Visa Waiver Pilot Program violator. As he is seeking admission to the United States within

ten years of his removal, he is inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. In a separate decision, we determined that the applicant does not warrant a favorable exercise of discretion in relation to the adjudication of the Form I-601. For the reasons stated in that decision, the AAO also concludes that the applicant is not eligible for a favorable exercise of discretion in the present matter. Regardless, an application for permission to reapply for admission is denied, in the exercise of discretion, to an applicant who is statutorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). As the applicant's Form I-601 remains denied, the applicant remains inadmissible under another section of the Act and no purpose would be served in granting the Form I-212 application.

ORDER: The appeal is dismissed.