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

(b)(6)

[redacted]

Date: SEP 13 2013 Office: U.S. CUSTOMS AND BORDER PROTECTION ADMISSIBILITY REVIEW OFFICE 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)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, Admissibility Review Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Jamaica and citizen of Canada. The record establishes that in August 2010, the applicant presented herself for inspection at the Detroit Ambassador Bridge. The applicant stated that she intended to visit a friend in the United States for a few days. The officer noticed household goods in the vehicle. During secondary inspection, the applicant admitted that she intended to immigrate to the United States and live in her home in Georgia.[1] *See Form I-213 Record of Deportable/Inadmissible Alien* and *Record of Sworn Statement in Proceedings,* dated August 13, 2010. The applicant was expeditiously removed as an immigrant who was not in possession of an immigrant visa and was barred from reentry for a period of five years. The applicant is consequently inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). She now 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)(C)(iii) in order to visit the United States on a temporary basis.

The Director found that the applicant had failed to establish that she merited favorable consideration. The applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied accordingly. *Decision of the Director,* dated May 25, 2012.

In support of the appeal, the applicant submits a sworn affidavit. The entire record was reviewed and considered in rendering this decision.

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

> (A) Certain aliens previously removed.-
>
> > (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.

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[1] The applicant contends that there was miscommunication with respect to her intentions and plans when she was questioned by immigration officers in 2010. She claims that she never meant to say "yes" to the question about intending to immigrate. She thought the term "immigrating" included visiting the United States temporarily. She further asserts that she did not mean to answer "yes" when asked if she was bringing most of her household belongings to the United States. She contends that she was only bringing a few items to make her vacation home more comfortable. *See Affidavit of* dated February 16, 2011 and *Sworn Affidavit for Notice of Appeal from* dated June 19, 2012.

(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 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 Secretary has consented to the alien's reapplying for admission.

In *Matter of Tin,* 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212:

> The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In the instant case, the applicant submits documentation establishing her extensive ties to Canada, noting the presence of her husband, who she married over thirty years ago, her four children, her home and her church. The record further establishes that the applicant has been residing in Canada since 1972. Moreover, a statement has been provided from the applicant. The applicant details that she has been traveling back and forth to the United States for over four decades. She explains that she has a vacation home in Georgia that she visits during winter months as a result of the cold weather in Canada. She also contends that she has numerous friends and family members in the United States who she visits, including her U.S. citizen father (now deceased) and her siblings. She notes that despite her ability to travel to the United States regularly, she has always returned to Canada as her home, children, church and medical coverage are there. The applicant maintains that after working for over 30 years in Canada, raising a family in Canada, purchasing multiple homes in Canada, she has never had the intention to live permanently in the United States and her past visits to the United States, always returning to Canada, are a testament to her intent to reside permanently in Canada. The applicant concludes that she wishes to be granted permission to travel to the United

States so that she may visit with family and friends and resume her vacations in Georgia. *See Sworn Statement for Notice of Appeal from* [redacted] dated June 19, 2012. Finally, a letter from the applicant's doctor confirms the presence of friends, relatives and a vacation home in the United States. *See Letter from* [redacted] dated October 9, 2010.

The favorable factors in this matter are the applicant's ties to Canada, including the presence of her husband and children and her home, the applicant's long-term gainful employment in Canada, her community ties, her church membership in Canada, the ownership of a vacation home in the United States, the presence of friends and family members in the United States, the apparent lack of a criminal record, the issuance of a 30 day pass in 2012 to the applicant so that she could attend her U.S. citizen father's funeral in the United States and the applicant's timely departure from the United States before the expiration of the period of authorized stay of said pass and the passage of almost three years since the applicant was ordered removed. The unfavorable factor in this matter is the applicant's removal from the United States in 2010.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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 been met.

ORDER: The appeal is sustained.