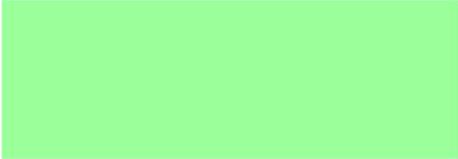


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

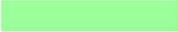


(b)(6)



Date: JUL 23 2014

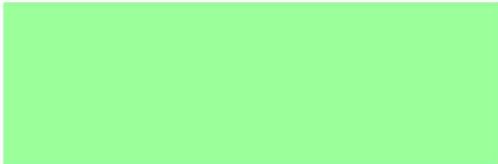
Office: NEBRASKA SERVICE CENTER

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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, Nebraska Service Center and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the prior AAO decision dismissing the appeal is withdrawn.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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)(A)(iii), in order to reside in the United States with her U.S. citizen daughter and lawful permanent resident mother.

The director noted that the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied and thus the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, would not be approved as a matter of discretion. The applicant's Form I-212 was denied accordingly. *Decision of the Director*, dated January 9, 2013.

In support of the motion counsel for the applicant submits a brief and documentation in support of the applicant's Form I-601. The record was reviewed in its entirety in rendering this decision.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 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 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

The record establishes that the applicant was ordered deported to Nigeria on March 7, 1994. A subsequent appeal was dismissed by the Board of Immigration Appeals in 2000. The applicant did not depart the United States until 2011. We concur with the director that the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). We note that the director had denied the applicant's Form I-212 solely based on the denial of the Form I-601. As we have now found, in a separate decision, that the applicant is eligible for a waiver of inadmissibility under sections 212(h), 212(i) and 212(a)(9)(B)(v) of the Act, we will withdraw the director's decision on the Form I-212 and render a new decision.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. We have found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, we find that the applicant's Form I-212 should also be granted as a matter of discretion.

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 motion to reopen is granted and the prior decision of the AAO dismissing the appeal is withdrawn.