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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 1 1 2014

OFFICE: U.S. CUSTOMS AND BORDER PROTECTION ADMISSIBILITY REVIEW OFFICE

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)(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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Admissibility Review Office (ARO), denied the Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), 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 Rwanda and citizen of Canada who attempted to enter the United States on March 16, 2011 from Canada using her Canadian passport and was removed pursuant to section 235(b)(1) of the Act the same day. She is the beneficiary of a spousal Petition for Alien Relative (Form I-130).

The ARO director found the applicant to be inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), by virtue of her removal. The applicant 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 visit her husband, friends and relatives, and for vacation. Determining that the factors unfavorable to the applicant outweighed those favorable to her, the director found an approval of the Form I-212 was not warranted and, accordingly, denied the application. *See Decision of ARO Director,* January 31, 2013

On appeal, the applicant contends that consent to reapply should be granted because the favorable factors outweigh the adverse factors. In support, she submits a statement. The record contains a Form I-212 and supporting documents, including a prior statement from the applicant. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(A) provides, pertinent part:

> (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 …) is inadmissible.
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> . . . .
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> (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, Department of Homeland Security] has consented to the alien's reapplying for admission.

It is uncontested that the applicant was denied admission to the United States as a nonimmigrant visitor on March 16, 2011 and removed that same day after admitting to having resided in the United States from October 28, 2009 to mid-March 2011 and intending to resume that residence. An immigration officer determined her to be inadmissible as an immigrant without an immigrant

visa, and noted no immigrant petitions were pending on her behalf. She was thus removed for being an intending immigrant and notified of being prohibited from entering the country for five years. *See Notice and Order of Expedited Removal (Form I-860),* March 16, 2011. The applicant is inadmissible pursuant to section 212(a)(9)(A)(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 until March 16, 2016.

Immigration records reflect that the applicant's husband filed a Form I-130 for the applicant on or about March 26, 2012 that was subsequently approved on August 13, 2013. The applicant submits a statement contending that she deserves permission to reapply for admission and disputes the ARO's finding that her claim that she believed her U.S. residence was legal was implausible because of her history of international travel and prior experience as an immigrant to Canada. In response, the applicant asserts that her international travel consisted of immigrating to Canada at age 13 with her family and receiving citizenship status prior to turning 18 through her parents' naturalization there. Further, she states that issuance of her U.S. taxpayer identification number (TIN) after she married the qualifying relative led her to think her stay was valid and claims that the inability to travel has imposed a financial and emotional burden.

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.

Applying the *Tin* factors, we conclude that the applicant has failed to demonstrate she deserves a favorable exercise of the Secretary's discretion.

The record establishes the applicant was removed for being an intending immigrant, removal occurred less than five years ago, the applicant has never been a lawful U.S. resident, she had visited the United States from Canada at least 15 times between May 2006 and June 2009 prior to her removal, she resided in the United States with her husband from October 2009 until March 2011, she and her husband have no children and there is no evidence of dependents or other family responsibilities, and the applicant is currently employed in Canada.

There is no documentation to support the claim that the applicant or her husband is suffering hardship due to her immigration problems. The record shows that her husband's status changed from asylee to lawful U.S. resident on June 29, 2010, and there is no evidence he is unable to procure admission to Canada to visit the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure*

Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972)). We note that the applicant's five-year bar to admission has less than two years remaining.

The record further reflects that the applicant understood her admission status to be that of a "visitor," and both her 2010 TIN application and a 2010 IRS notice of TIN issuance state that the TIN issuance does not change her immigration status. Although the applicant was underage when she left Rwanda and later became a Canadian citizen, the record reflects that as an adult she traveled frequently between Canada and the United States, entered both by air and land transportation, and utilized a number of U.S. ports of entry.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. Considering the totality of the circumstances, the negative factors outweigh the positive factors, and a favorable exercise of discretion is not 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. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.