(b)(6)

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

[redacted]

Date: MAY 21 2014 Office: ST. PAUL 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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

[redacted]

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 application for permission to reapply for admission after removal was denied by the Field Office Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of Nigeria who was found to be 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). He 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 his U.S. citizen spouse and children.

The Field Office Director noted that the applicant was ineligible for a grant of the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), because the record failed to establish that the applicant had departed the United States following the order of deportation. The applicant's Form I-212 was denied accordingly. *See Field Office Director's Decision,* dated September 12, 2013.

On appeal, counsel for the applicant submits the Form I-290B, Notice of Appeal (Form I-290B). On the Form I-290B, counsel contends that the USCIS erred by not considering all of the evidence submitted in the record. On Part 2, counsel indicates that a brief and/or additional evidence will be submitted to the AAO within 30 days. As of today, no brief and/or additional evidence in support of the instant appeal has been received. The record is thus considered complete and was reviewed in its entirety in rendering this decision.

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.
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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
> > >
> > > (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.

The record reflects that the applicant was ordered deported from the United States in September 1986. The applicant subsequently re-entered the United States with a fraudulent passport and nonimmigrant visa in 1988. The applicant was again ordered removed in June 2003, and in December 2013, the Board of Immigration Appeals (BIA) upheld the June 2003 decision of the Immigration Judge. The applicant's deportation order will, therefore, render him inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act upon his departure from the United States, and he will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant may apply for conditional approval of Form I-212 under 8 C.F.R. § 212.2(j) before departing the United States, notwithstanding his ineligibility for adjustment of status. *See Instructions for Form I-212.* The approval of Form I-212 under these circumstances is conditioned upon the applicant's departure from the United States, and the Field Office with jurisdiction over the applicant's place of residence has jurisdiction over the application, irrespective of whether a waiver under section 212(g),(h),(i), or 212(a)(9)(B)(v) is needed.[1] *See Instructions for Form I-212, Appendix I.*

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.

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[1] It is also noted that this applicant, upon departure from the United States, will have accrued over a year of unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until the date of the applicant's departure. As such, the applicant will be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). In addition, based on the applicant's misrepresentation with respect to his entry to the United States in 1988 as outlined above, the applicant will also be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. In order to seek a waiver of inadmissibility, the applicant will be required to file a Form I-601 waiver application pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), together with his application for an immigrant visa.

The favorable factors in this matter are the applicant's long-term residence, since 1988, in the United States; community ties in Minnesota; gainful employment since 2000 at [redacted] and the presence of his U.S. citizen spouse and children, born in 1984 and 1986. The unfavorable factors are the applicant's failure to depart the United States in 1983 pursuant to the terms of his nonimmigrant visa; the applicant's deportation in 1986; the applicant's failure to depart pursuant to a 2003 deportation order; the applicant's conviction in 1985 for False Representation, U.S. citizen, in violation of 18 U.S.C. § 911, a Class E felony, for falsely representing he was a U.S. citizen when making application for educational grants and loans; the applicant's conviction in 1994 for Re-entering the United States Illegally, in violation of 18 U.S.C. §§ 1326(a) and (b)(1), a Class D felony; fraud or willful misrepresentation when procuring entry to the United States in 1988; the applicant's use of multiple identities while in the United States and his possession of two Nigerian passports in different names; and periods of unlawful presence and unauthorized employment in the United States.

The applicant has not provided any documentation on appeal or with the Form I-212 submission establishing by supporting evidence that the favorable factors outweigh the unfavorable ones. 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 not been met.

ORDER: The appeal is dismissed.