



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **AUG 27 2014**

Office: PROVIDENCE FIELD 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:

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,

f.   
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Providence, Rhode Island, 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 applicant is a native and citizen of Guatemala who was found to be inadmissible under section 212(a)(2)(A)(i)(I) Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II) for having departed the United States while an order of removal was outstanding and seeking admission within 10 years of the date of departure. The applicant does not contest the findings of inadmissibility but rather seeks permission to reapply for admission into the United States.

The director determined that the applicant was inadmissible under 212(a)(2)(A)(i)(I) of the Act and had not filed an Application for Waiver of Grounds of Inadmissibility (Form I 601). The Application for Permission to Reapply for Admission (Form I-212) was therefore denied as a matter of discretion. *See Decision of the Field Office Director* dated November 15, 2013.

On appeal counsel for the applicant contends that the field office director's decision contains errors in denying the application for permission to reapply for admission. With the appeal counsel submits a brief and financial documentation for the applicant. The record also includes documentation showing the applicant's return to Guatemala, letters for support for the applicant, and conviction documents. 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.
- (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.

On appeal counsel does not dispute the applicant's criminal convictions, but asserts that contrary to the field office director's decision indicating that the applicant had been removed, she had presented herself to U.S. Immigration and Customs Enforcement officers prior to expiration of the voluntary departure period to state that she needed additional time to leave the United States even if that resulted in the order of voluntary departure converting into an order of removal, and that the applicant then paid for her own departure. Counsel further states that while the American consul in Guatemala did not indicate a Form I-601 was required for the applicant, a waiver would be filed. Counsel requested that the appeal of the I-212 decision be held in abeyance to allow an I-601 waiver application to be filed.<sup>1</sup>

The record reflects that the applicant entered the United States without inspection in 1989 and was convicted of shoplifting in 1992, larceny in 1994, and shoplifting again in 1996. On August 30, 2012, an Immigration Judge granted the applicant voluntary departure until December 28, 2012. The record reflects that the applicant did not depart the United States until March 21, 2013, and subsequently received validation of her departure from the U.S. embassy in Guatemala on March 26, 2013. The applicant thus failed to depart the United States in compliance with the IJ decision and is therefore inadmissible for a period of 10 years from her date of departure.

We note that the Form I-212 filing instructions indicate that after attending a visa interview at a U.S. Consulate, an applicant for an immigrant visa who is outside the United States and who also requires a waiver of inadmissibility (Form I-601) should file both the Form I-212 and the Form I-601 at the same time to United States Citizenship and Immigration Services Phoenix Lockbox.

An application for permission to reapply for admission is properly denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10

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<sup>1</sup> We will not withhold adjudication of an application pending receipt of another application and will adjudicate this application based on the record. We note that subsequent to counsel's appeal of the I-212 denial no Form I-601 has been received to date.

I&N Dec. 776 (reg. Comm. 1964). As the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act and no waiver application has been submitted, the appeal of the denial of her application for permission to reapply is dismissed as a matter of discretion, as its approval would not result in the applicant's admissibility to the United States.

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.