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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

413

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 05 2007

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared unnecessary.

The applicant is a native of the former U.S.S.R. and a citizen of Canada, who on August 25, 1993, at the Champlain, New York, Port of Entry, was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud and willful misrepresentation of a material fact, and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I), for being an immigrant not in possession of a valid immigrant visa or other valid entry document. On the same date, the applicant was served a Notice to Applicant for Admission Detained for Hearing before an Immigration Judge (Form I-122) and the applicant was turned over to Canadian immigration officials with instructions to appear for an exclusion hearing at a later date. On April 14, 1994, the Form I-122 was cancelled, without prejudice, because it could not be filed with the immigration court due to lack of a proper address. On July 27, 2000, at the JFK International Airport, the applicant applied for admission into the United States. During his inspection, it was revealed that the applicant entered the United States without a lawful admission or parole on July 4, 1994, and remained for one and one half years. The applicant was found inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act. Consequently, on July 28, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 travel to the United States as a nonimmigrant visitor.

The Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act, and that no waiver is available to him under the Act. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated September 30, 2005.

The AAO finds that the Director erred in his decision stating that the applicant is not eligible for any exception or waiver under the Act. The applicant in the present case filed a Form I-212 in order to be eligible to apply for a nonimmigrant visa. If the applicant's Form I-212 is granted he will be eligible to file a waiver of his inadmissibility pursuant to section 212(d)(3) of the Act. In addition, even if he were applying for an immigrant visa he would be eligible to apply for a waiver under section 212(i) of the Act based on his U.S. citizen mother.

On appeal, filed by the applicant's mother, she states that she and her family live in the United States and the applicant cannot visit them. In addition, the applicant's mother states that her health is deteriorating rapidly and she needs the applicant's presence. Finally, the applicant's mother requests an oral argument because it is difficult for her to write down all the details concerning the events that occurred in 1993.

The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

Section 212(a)(9)(A) 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.

(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.

To recapitulate, the applicant was removed from the United States on July 28, 2000. The record of proceeding does not reflect that the applicant re-entered or attempted to reenter the United States after his removal. The applicant's mother states that the applicant resides in Canada and there is no documentary evidence to show otherwise. It has now been more than five years since the applicant's date of removal. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act. Accordingly, the appeal will be dismissed and the Form I-212 will be declared unnecessary, as it has been established that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act.

The AAO notes that in his September 30, 2005, decision the Director acknowledged that the applicant's five-year bar to admission would not be a factor after July 27, 2005.

The AAO further notes that the applicant remains inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. Since the applicant wishes to visit the United States as a non-immigrant visitor, he must file a waiver of his ground of inadmissibility pursuant to section 212(d)(3) of the Act.

**ORDER:** The Director's decision is withdrawn, the appeal is dismissed and the application declared unnecessary.