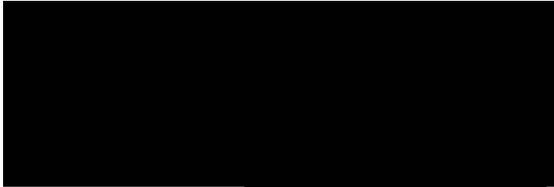


...to  
prevent ~~secretly~~ unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE:

Office: SEATTLE

Date:

DEC 20 2000

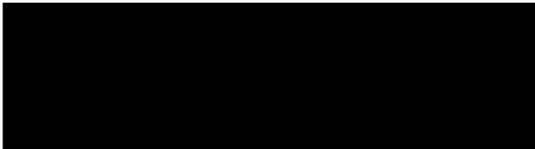
H4

IN RE:



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:



**PUBLIC COPY**

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Seattle, Washington, 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 The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of India who, on January 8, 1999, entered the United States without admission or parole. On June 10, 1999, the applicant filed an Application for Asylum or Withholding of Removal (Form I-589). On July 22, 1999, the Form I-589 was denied and the applicant was placed into proceedings. On November 30, 2000, the immigration judge denied the applicant's applications for asylum, withholding of removal and convention against torture and ordered him removed from the United States. On February 20, 2000, the applicant filed an appeal with the Board of Immigration Appeals (BIA). On April 17, 2001, the applicant married [REDACTED] a United States citizen. On July 11, 2001, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On November 9, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the Form I-130. On April 2, 2002, the applicant and [REDACTED] appeared at Citizenship and Immigration Services' (CIS) Seattle District Office, where they gave contradictory testimony in regard to their marriage. On March 3, 2003, the BIA remanded the applicant's case to the immigration judge for adjudication of the applicants Form I-485 based on his marriage to [REDACTED]. On September 10, 2003, the Form I-130 was denied for abandonment because the applicant was in the process of divorce proceedings with [REDACTED]. On August 20, 2003, the applicant's U.S. citizen son was born. On April 15, 2004, the immigration judge denied the applicant's Form I-485 and ordered him removed from the United States. On May 26, 2004, the applicant married [REDACTED], a naturalized U.S. citizen. On June 24, 2004, [REDACTED] filed a Form I-130 on behalf of the applicant. The applicant appealed the immigration judge's decision to the BIA. On September 8, 2004, the BIA dismissed the applicant's appeal. On September 30, 2004, the applicant filed an appeal to the Ninth Circuit Court of Appeals (Ninth Circuit). On November 8, 2004, the applicant filed the Form I-212. The district director found the applicant inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 to remain in the United States with his spouse and child.

The district director determined that the unfavorable factors outweighed the favorable factors and denied the Form I-212 accordingly. *See District Director's Decision* dated June 21, 2005.

On appeal, counsel contends that the applicant warrants a favorable exercise of discretion because his first marriage was not fraudulent and his second wife and his child would suffer hardship if he were denied permission to reapply for admission. *See Form I-290B*, dated July 18, 2005. In support of the appeal, counsel submitted only the above-referenced Form I-290B. The entire record was reviewed in rendering a decision in this case.

The AAO finds that the applicant is no longer inadmissible under section 212(a)(9)(A) of the Act and he is, therefore, not required to receive permission to reapply for admission at this time.

Section 212(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.
- (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 on a 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 district director based the finding of inadmissibility under section 212(a)(9)(A) of the Act on the immigration judge's April 15, 2004 removal order and the BIA's September 8, 2004 dismissal of the applicant's appeal. The record reflects that, on June 16, 2006, the Ninth Circuit remanded the applicant's case to the BIA and, on October 24, 2006, the BIA remanded the applicant's case to the immigration judge for reconsideration of the applicant's application for Asylum and Convention Against Torture. As such, the AAO finds that the applicant is not subject to a final order of removal and is not inadmissible pursuant to section 212(a)(9)(A) of the Act.

The AAO therefore finds that the applicant is currently not required to apply for permission to reapply for admission to the United States because there is no evidence in the record that the applicant is subject to a final order of removal or has ever been removed from the United States. Since the applicant does not require permission to reapply for admission, the appeal will be dismissed, the decision of the district director will be withdrawn and the permission to reapply for admission application will be declared moot. The AAO notes that if the applicant becomes subject to a final order of removal or is removed from the United States at a later date, he may need to file a new Form I-212.

**ORDER:** The appeal is dismissed, the prior decision of the district director is withdrawn and the application for permission to reapply for admission is declared moot.