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U.S. Citizenship  
and Immigration  
Services



H4

FILE:

Office: VERMONT SERVICE CENTER

Date: OCT 10 2016

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:

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 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 The Director's decision will be withdrawn, the appeal will be dismissed and the application declared unnecessary.

The applicant is a native and citizen of Jamaica who was admitted into the United States as a Lawful Permanent Resident (LPR) on October 9, 1993. On February 13, 1996, in the Supreme Court of the State of New York, County of the Bronx, the applicant was convicted of the offense of criminal possession of a weapon in the third degree, to wit: a loaded firearm, in violation of section 265.02 of the New York State Penal Law. On May 14, 1996 the applicant was sentenced to five years probation. On April 27, 2000, the applicant applied for admission into the United States as a returning permanent resident. The applicant was found inadmissible pursuant to sections 237(a)(2)(C) of the Immigration and Nationality Act (the Act), for having been convicted at any time after admission of possession of a firearm. The applicant was ordered to appear for a deferred inspection and was taken into custody. On June 22, 2000, a Notice to Appear (NTA) for a removal hearing before an immigration judge was served on him. On June 29, 2000, the applicant was released on a \$5,000 bond. On February 5, 2001, an immigration judge found the applicant removable from the United States and granted him voluntary departure until June 5, 2001, in lieu of removal. The applicant departed the United States on June 3, 2001. He 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 and reside with his U.S. citizen spouse and children.

The Director determined that the applicant departed the United States on June 7, 2001, that he did not file an Application for Waiver of Grounds of Excludability (Form I-601) for his criminal conviction and that the unfavorable factors in the applicant's case outweighed the favorable ones. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated March 15, 2005.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is signed by the applicant's spouse and not the applicant himself. Therefore, the AAO will not be sending a copy of the decision to the attorney mentioned on the Form G-28.

On appeal, counsel requests 45 days to submit a brief and/or evidence to the AAO and file a Form I-601 to illustrate the extreme hardship suffered by the applicant's family.

The appeal was received by the Vermont Service Center on April 14, 2005, and to this date, approximately one and one half years later no documentation has been received. Therefore, the AAO will adjudicate the appeal based on the documentation in the record of proceeding.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether a Form I-212 is necessary. The applicant's Service file contains a Jamaican Immigration Card reflecting that the applicant landed in Jamaica on June 3, 2001, prior to the expiration of the voluntary departure order. Accordingly, the AAO finds that the Director erred in stating that the applicant was "deported on June 7, 2001". The record of proceedings does not reflect that the applicant re-entered or attempted to reenter the United States after he departed.

Therefore, the AAO finds that the applicant is not inadmissible pursuant to section 212(a)(9)(A) of the Act and a Form I-212 pursuant section 212(a)(9)(A)(iii) of the Act is not necessary. As such, the issue of whether

the unfavorable factors in the applicant's case outweigh the favorable factors need not be addressed. Accordingly, the Director's decision will be withdrawn, the appeal will be dismissed and the Form I-212 will be declared unnecessary as it has been established that the applicant is not inadmissible under section 212(a)(9)(A) of the Act.

The AAO notes that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude. Since the applicant was not convicted of an aggravated felony, he may be eligible to file a Form I-601 under section 212(h) of the Act, 8 U.S.C. § 1182(h) if a Petition for Alien Relative (Form I-130) is filed on his behalf and the applicant can show that he has a qualifying family member in order to file a Form I-601.

**ORDER:** The appeal is dismissed and the application is declared unnecessary.