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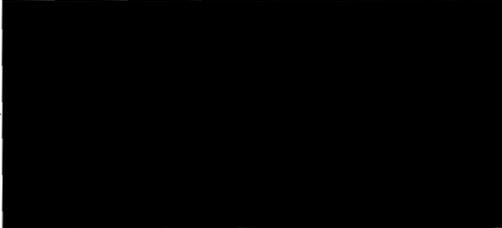
U.S. Department of Homeland Security  
20 Massachusetts Avenue, N.W., Rm. 3000  
Washington, DC 20529



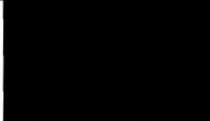
U.S. Citizenship and Immigration Services

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FILE:

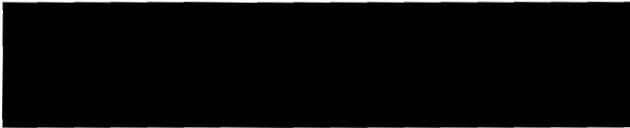


Office: VERMONT SERVICE CENTER  
[consolidated therein]

Date: MAR 20 2008

IN RE:

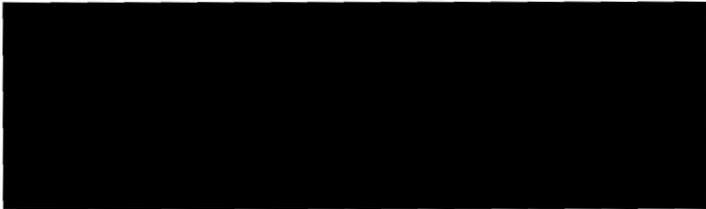
Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:



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 after removal was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who entered the United States without inspection in August 1993. On September 23, 1997, a Notice to Appear (NTA) was issued against the applicant.<sup>1</sup> On January 27, 1998, an immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States and a Warrant of Removal/Deportation (Form I-205) was issued on February 24, 1998. Based on the applicant's Biographic Information (Form G-325A), the applicant voluntarily departed the United States in January 2000. On September 1, 2000, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain until February 28, 2001. On September 7, 2001, the applicant married [REDACTED], a lawful permanent resident of the United States, in Massachusetts. On October 15, 2001, the applicant's wife became a United States citizen. On or about October 29, 2001, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. At the same time, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On March 11, 2002, the applicant's Form I-130 was approved. On November 4, 2002, the applicant's wife filed another Form I-130 on behalf of the applicant. On November 22, 2002, the applicant's son, [REDACTED] was born in Massachusetts. On October 17, 2002, the applicant's prior order of removal was reinstated. On October 26, 2002, another Form I-205 was issued for the applicant. On February 10, 2003, the applicant was removed from the United States. On June 7, 2004, the applicant's second Form I-130 was approved. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), and 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B). 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 with his naturalized United States citizen spouse and United States citizen child.

The Acting Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(B) of the Act, 8 U.S.C. § 212(a)(9)(B), for being unlawfully present in the United States for one year or more. Additionally, the Acting Director found that since the applicant failed to file a Waiver of Grounds of Excludability (Form I-601), "no purpose would be served in approving [the Form I-212] application," and denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Acting Director's Decision*, dated November 8, 2006. The AAO finds that the applicant is also inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 212(a)(9)(A)(ii)(I), for being ordered removed under section 240 or any other provision of law.

Counsel contends that the Acting Director decision is "based on a fundamental error of law: the erroneous conclusion that an approved I-601 is a precondition to approval of an I-212 when an applicant is required to have both advance permission to reenter and a waiver of inadmissibility prior to the issuance of a visa." *Form I-290B*, filed December 4, 2006. Counsel states that the applicant "submitted a form I-601 Application for Waiver of Inadmissibility to the consular officer at his October 19<sup>th</sup>, 2006, immigrant visa interview. The

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<sup>1</sup> The applicant used the name "[REDACTED]" when he was apprehended; therefore, the initial immigration court proceedings are under [REDACTED]

officer took that application, and forwarded it to the proper office for adjudication. That application remains pending.” *Appeal Brief*, page 2, dated December 1, 2006.

8 C.F.R. § 212.2(d) states, in pertinent part:

(d) *Applicant for immigrant visa.* Except as provided in paragraph (g)(3) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. Except as provided in paragraph (g)(3) of this section, if the applicant also requires a waiver under section 212 (g), (h), or (i) of the Act, Form I-601, Application for Waiver of Grounds of Excludability, *must be filed simultaneously with the Form I-212 with the American consul having jurisdiction over the alien’s place of residence.* The consul must forward these forms to the appropriate Service office abroad with jurisdiction over the area within which the consul is located.

Emphasis added.

The AAO notes that the applicant failed to file his Form I-212 and Form I-601 simultaneously with the American consul having jurisdiction over the alien’s place of residence; therefore, the applicant’s Form I-212 was not properly filed. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.