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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE:

Office: ROME, ITALY

Date: APR 29 2009

IN RE:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the District Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Algeria who entered the United States as a stowaway in April of 1995. He married former spouse, [REDACTED] on August 15, 1997. On September 25, 1997 the applicant's former spouse filed both a Petition for Alien Relative (Form I-130) and an Application for Adjustment of Status (Form I-485) for the applicant. However, she withdrew these applications on October 15, 1998 after filing a police report, and being granted a restraining order because of an incident which led to the charges being brought against the applicant on July 13, 1998. As a result of these charges, the applicant was convicted of assault and battery and for making threats to his former spouse on August 27, 1998. It is noted that the applicant's former spouse did try to reconcile with him, recanted testimony that she provided to police regarding the assault committed against her by the applicant, and then filed a second Form I-130 for him on April 27, 2001. This Form I-130 was approved on January 23, 2002. However, the applicant's former spouse later withdrew this second Form I-130. It is also noted that though the applicant was granted suspended sentences for the crimes he was convicted of, he remains convicted of these crimes for immigration purposes.

After the applicant was convicted, the former Immigration and Naturalization Service (INS) learned that the applicant had entered the United States as a stowaway. Because the applicant had no legal immigration status in the United States, he was issued a Notice to Appear before an immigration judge on March 12, 1999. On May 26, 1999 the applicant applied defensively for asylum and also applied for voluntary departure. On October 22, 1999, an immigration judge found the applicant was ineligible for asylum, withholding of removal or relief under the U.N. Convention Against Torture. The immigration judge also denied the applicant's request for voluntary departure. In denying the application for voluntary departure, the judge stated that the applicant's unlawful manner of entry as a stowaway, when combined with the serious nature of his conviction for assault and battery, caused him to fail to establish good moral character.

The applicant appealed the immigration judge's decisions on his asylum and withholding of removal applications to the Board of Immigration Appeals (BIA). However, the BIA affirmed the immigration judge's decisions denying those applications on March 21, 2003. In doing so, the BIA stated that even if the applicant had established statutory eligibility for asylum, his 1998 conviction for assault and battery against his former spouse would, necessitate a discretionary denial of the application. *Decision of the BIA*, dated March 21, 2003, citing *Matter of Jean*, 23 I&N Dec. 373, 385 (A.G. 2002). The applicant then filed motion for a stay of removal, which was denied by the First Circuit Court of Appeals on July 29, 2003. Therefore, a final order of removal was issued on September 4, 2003. The applicant filed a second motion for a stay of removal. However, he was notified by the First Circuit Court of Appeals both on November 5, 2003 and November 25, 2003 that if he failed to file a brief by December 9, 2003, his appeal would be dismissed. As he failed to file a brief by that date, the First Circuit Court of Appeals dismissed his appeal on January 12, 2004. The applicant was removed from the United States on April 14, 2004. This removal triggered the applicant's unlawful presence inadmissibility. Because the BIA denied the applicant's asylum

appeal on March 21, 2003, and the applicant was then removed on April 14, 2004 he was unlawfully present in the United States for a period of more than one year. The applicant was, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act on that basis.

The applicant married his current spouse in a religious ceremony on May 31, 2003 and then in a civil ceremony on September 21, 2003, approximately seven months before he was removed. On September 27, 2003, his current spouse filed a Form I-130 for the applicant. This petition was approved on June 2, 2004. The applicant also sought to waive his inadmissibility under section 212(a)(9)(B)(II) of the Act and currently seeks permission to reapply for admission after removal under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A) in order to obtain a visa to enter the United States to reside with his wife and children.

As previously noted, the District Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(B)(II) of the Act, for having been unlawfully present in the United States for more than one year. The director found that the evidence in the record established that the applicant's qualifying relative would experience extreme hardship if an Application for Waiver of Inadmissibility (Form I-601) was not granted. However, the director denied the Form I-601 application as a matter of discretion after reviewing documents associated with the applicant's criminal convictions, finding that unfavorable factors in the applicant's case outweighed the favorable factors. *Decision of the District Director regarding the Application for Waiver of Inadmissibility*, dated December 20, 2006. Because the director found that the applicant was inadmissible and a waiver of that inadmissibility was not warranted, the director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) as moot. *See Director's Decision regarding the Application for Permission to Reapply for Admission into the United States after Deportation or Removal*, dated December 20, 2006.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 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 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal counsel requests that the applicant's Form I-212 application be reconsidered after reconsideration of his Form I-601 application is complete. Counsel states that he believes that the applicant's Form I-601 appeal will be sustained and asks that the applicant's Form I-212 be reinstated and remanded for further consideration accordingly, as sustaining the applicant's appeal of the applicant's Form I-601 application will cause the I-212 application to no longer be moot. Finally on the Notice of Appeal to the AAO (Form I-290B) counsel asks that the evidence submitted in support of the applicant's I-601 appeal also be considered when rendering a decision on the Form I-212 application.

However, after a review of the applicant's appeal of the director's decision on the applicant's Form I-601 waiver application, the AAO concurs with the District Director that though the applicant has established that his spouse would experience extreme hardship if a waiver of inadmissibility is not granted, negative factors outweigh positive factors in this case and a waiver of the applicant's inadmissibility under section 212(a)(9)(B)(II) is not warranted. As the applicant remains inadmissible to the United States under section 212(a)(9)(B)(II) of the Act, no purpose would be served in granting permission to reapply for admission through approval of the Form I-212. Therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.