



U.S. Citizenship  
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FILE:



Office: COLUMBUS, OH  
RELATES)

Date:

**AUG 11 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)(iii) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

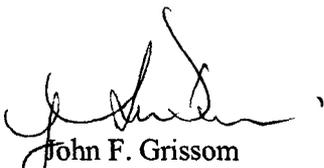
ON BEHALF OF APPLICANT:



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, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Columbus, Ohio, 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 applicant is a native and citizen of Ghana who, on December 26, 1994, appeared at John F. Kennedy International Airport. The applicant indicated that he wished to apply for asylum in the United States. On the same day, the applicant was placed into immigration proceedings. On January 22, 1996, the immigration judge denied the applicant's application for asylum and withholding of removal. The immigration judge ordered the applicant removed from the United States. The applicant appealed to the Board of Immigration Appeals (BIA). On October 9, 1996, the BIA dismissed the applicant's appeal. The applicant failed to depart the United States.

On May 21, 1997, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on a diversity visa application under the name [REDACTED]." On June 18, 1997, the applicant appeared for an interview associated with the Form I-485. The applicant represented himself to be [REDACTED] and testified that he had never been arrested by immigration or ordered removed from the United States. On May 31, 2000, the Form I-485 was denied for fraud because a review of the diversity visa application revealed that the applicant was not the same person who had filed the original diversity visa lottery entry.

On February 15, 2001, the applicant married his then lawful permanent resident spouse in Ohio. On April 9, 2001, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On July 17, 2002, the Form I-130 was approved. On December 30, 2004, the applicant filed a second Form I-485 based on the approved Form I-130. On December 6, 2005, the Form I-485 was denied. On January 25, 2007, the applicant was removed from the United States and returned to Ghana.

On August 18, 2008, the applicant filed the Form I-212 along with an Application for Waiver of Grounds of Inadmissibility (Form I-601) indicating that he resided in Ghana. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) for a period of ten years. 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 reside in the United States with his now naturalized U.S. citizen spouse, two U.S. citizen children and his lawful permanent resident children.

On March 24, 2009, the field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated March 24, 2009.

On appeal, counsel contends that the Form I-212 should be granted on humanitarian grounds due to the applicant's remorse and his intention to obey all U.S. laws in the future, his children's need for their father to support them emotionally in their development and for the sake of family unity. *See Form I-290B*. In support of his contentions, counsel submits only the referenced Form I-290B. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) 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.

....

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.- Any alien who-

- (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
- (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of

section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty;  
and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

Counsel and the applicant assert that the applicant has remained outside the United States and lived in Ghana since his removal in 2007.<sup>1</sup>

The AAO notes that the applicant is inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for attempting to obtain immigration benefits by fraud and for accruing more than one year of unlawful presence, from April 1, 1997, the date of enactment of unlawful presence provisions, until January 25, 2007, the date on which he departed the United States, and in seeking admission within ten years. To seek a waiver of these grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), an applicant must file a Form I-601.

As required by 8 C.F.R. § 212.2(d), an immigrant visa applicant who is outside the United States and requires both a waiver and permission to reapply for admission must simultaneously file the Form I-601 and the Form I-212 with the U.S. Consulate having jurisdiction over the applicant's place of residence. The record reflects that the applicant filed both the Form I-212 and Form I-601 with the Columbus, Ohio Field Office. As the applicant has not complied with the regulatory requirements for filing the Form I-212, the application in this matter was improperly filed. Accordingly, the appeal is dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO notes that there are inconsistencies in the record as to whether the applicant departed the United States after having been ordered removed and reentered the United States prior to filing his second Form I-485. The Form I-130 indicates that the applicant had entered the United States without inspection on June 2, 1999. The applicant is required to show proof that he did not depart the United States after having been ordered removed and illegally reentered the United States in 1999 and that he has resided outside the United States since his 2007 removal at the time of his immigrant visa interview. If it is confirmed that the applicant illegally reentered the United States in 1999 or at any time after he had been ordered removed or since his 2007 departure, he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is ineligible for permission to reapply for admission until he has remained outside the United States for a period of ten years. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006) and *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007).