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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 and Immigration Services

H4

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: DEC 0 1 2009

IN RE: [redacted]

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:

[redacted]

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California, 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 summarily dismissed.

The applicant filed a Form I-212, Application for Permission to Reapply for Admission, with the San Francisco Field Office on November 8, 2007. The director denied the application on July 10, 2009, finding that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act). Counsel filed a timely Form I-290B on August 7, 2009. Regarding the application type being appealed, counsel wrote "I-212," and indicated that a brief or additional evidence would be submitted within 30 days. On September 9, 2009, the AAO received a brief from counsel that was titled "Applicant's Brief in Support of Appeal of Denial of I-601 Waiver." Counsel states in the brief that: "USCIS also denied a Form I 212 application for [the applicant] which appears to be in error since no application for a I 212 waiver was filed in this case." Counsel's brief does not otherwise mention the grounds that the director stated in her letter of denial for the Form I-212. The AAO, therefore, considers the record complete and ready for adjudication.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO may summarily dismiss an appeal "when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Although counsel believes that the applicant never filed a Form I-212, the AAO notes that included in the record is a Form I-212 that was received by the San Francisco Field Office on November 8, 2007 with the required fee that was signed by counsel, noting that the form was prepared by her at the request of the applicant. Thus, counsel's claim that the applicant never filed a Form I-212 is erroneous.[1] Given the absence of a brief or additional evidence which may be considered by the AAO regarding the denial of the Form I-212, the applicant has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, and the appeal must be summarily dismissed for that reason.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish eligibility for the benefit it is seeking. Here, the applicant has not met that burden. Accordingly, the AAO affirms the director's decision to deny the application and dismisses the appeal.

ORDER: The appeal is summarily dismissed. The application is denied.

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[1] Another of counsel's claims in the brief is that the Form I-212 was denied by the San Jose, California Field Office. That claim is also erroneous, as the denial letter clearly indicates that the Field Office Director, San Francisco, California, issued the denial letter.