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U.S. Citizenship
and Immigration
Services



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FILE:



Office: VERMONT SERVICE CENTER

Date:

FEB 02 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)

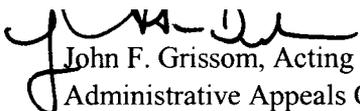
ON BEHALF OF APPLICANT:



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 Director, Vermont Service Center, 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 Bangladesh who, on November 9, 1991, appeared at John F. Kennedy International Airport. The applicant presented a counterfeit I-688 Temporary Resident Card and passport bearing the name [REDACTED]. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i), 212(a)(7)(A)(i)(I) and 212(a)(7)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i), 1182(a)(7)(A)(i)(I), and 1182(a)(7)(B), for attempting to enter the United States by fraud, being an immigrant without valid documentation and being an alien without valid nonimmigrant documentation. On the same day, the applicant was placed into immigration proceedings. The applicant filed a Request for Asylum in the United States (Form I-589) before the immigration judge. On July 30, 1993, the immigration judge denied the applicant's applications for asylum and withholding of removal and ordered him removed from the United States. The applicant appealed to the Board of Immigration Appeals (BIA). On September 28, 1998, the BIA dismissed the applicant's appeal. On January 25, 1999, the applicant married a U.S. citizen, [REDACTED]. On February 2, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on his behalf by [REDACTED]. Prior to May 22, 2001, the applicant traveled to Bangladesh and reentered the United States utilizing an Advance Parole Document (I-512). On February 25, 2003, a warrant for the applicant's removal was issued. On April 3, 2003, the applicant was removed from the United States and returned to Bangladesh, where he has since resided. On July 14, 2003, [REDACTED] filed a second Form I-130. On the same day, the applicant filed a Form I-212. On May 18, 2004, the acting director of the Vermont Service Center, denied the Form I-212. On June 15, 2005, the applicant married his current U.S. citizen wife, [REDACTED]. On September 14, 2005, [REDACTED] filed a Form I-130 on behalf of the applicant. On August 22, 2006, the Form I-130 was approved and forward to the National Visa Center (NVC). On September 29, 2006, the applicant filed the Form I-212. 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) and 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 U.S. citizen spouse and children.

The director determined that the unfavorable factors outweighed the favorable factors in the applicant's case and denied the Form I-212 accordingly. *See Director's Decision* dated April 15, 2008.

On appeal, counsel contends that the director failed to consider the applicant's family members' hardship in denying his Form I-212. *See Form I-290B*, received May 8, 2008. In support of his contentions, counsel submits the referenced Form I-290B, letters from the applicant, his spouse and Imam, a good conduct certificate, medical documentation and photographs. 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.

Counsel, the applicant and his spouse assert that the applicant has remained outside the United States and lived in Bangladesh since he was removed on April 3, 2003. The record reflects that the approved Form I-130 has been forwarded to the NVC for processing of the applicant's immigrant visa at a U.S. Consulate abroad. The AAO finds the evidence of record sufficient to establish that the applicant is waiting to consular process his immigrant visa at a U.S. Consulate in Bangladesh.

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 enter the United States by fraud in 1991 and as an alien who has accumulated more than one year of unlawful presence and is seeking admission within ten years of that departure. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* However, the applicant filed his Form I-485 after he had been ordered removed and failed to depart the United States. Therefore, the applicant's application for adjustment of status was not affirmative and the applicant accrued unlawful presence from September 28, 1998, the date on which his appeal was dismissed by the BIA until he traveled utilizing an advance parole in 2001. The applicant reentered the United States on May 21, 2001, and began to again accrue unlawful presence until he was removed on April 3, 2003. To seek a waiver 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 an Application for Waiver of Ground of Inadmissibility (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. 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.