identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H 4

FILE: [redacted] Office: WASHINGTON, DC Date: JAN - 2 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 or reopen, 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, Washington, District of Columbia, 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 whose then lawful permanent resident husband, on March 25, 1999, filed a Petition for Alien Relative (Form I-130), on behalf of the applicant. On November 9, 1999, the applicant attempted to enter the United States at John F. Kennedy International Airport. The applicant presented a Bangladeshi passport and altered Canadian landed immigrant papers bearing the name ." The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 212(a)(7)(A)(i)(I), for attempting to enter the United States by fraud and being an immigrant without valid documentation. On November 17, 1999, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). On January 31, 2002, the Form I-130 was approved. On July 8, 2002, the applicant was issued a V nonimmigrant visa. The applicant failed to indicate to the U.S. Consulate that she had been previously removed or attempted to obtain admission to the United States by fraud. On July 15, 2002, the applicant entered the United States utilizing the fraudulently obtained V nonimmigrant visa. On May 27, 2004, became a naturalized U.S. citizen. On July 13, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On December 15, 2005, the applicant filed the Form I-212. On January 17, 2008, the Form I-485 was denied. The applicant filed a motion to reopen the Form I-485. On February 14, 2008, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On June 27, 2008, the applicant's Form I-601 was denied. On the same day, the applicant's motion to reopen the Form I-485 was denied. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She 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 her U.S. citizen spouse and children.

The field office director determined that no purpose would be served in adjudicating the application for permission to reapply for admission because the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and failed to obtain a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision* dated January 17, 2008.

On appeal, counsel contends that the applicant has filed a Form I-601 and is eligible to apply for permission to reapply for admission. *See Counsel's Letter,* dated February 11, 2008. In support of his contentions, counsel submits the referenced letters and a copy of the Form I-601. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa,

other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) Falsely claiming citizenship. –

a. In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

b. Exception-

In the case of an alien making a representation described in subclause (I), if each natural parents of the alien . . . is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

In a separate proceeding, the field office director found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. While counsel states that the applicant has filed the Form I-601, the field office director issued a denial of the applicant's application for a waiver of this ground of inadmissibility on June 27, 2008. *See Field Office Director's Decision Form I-601,* dated June 27, 2008. The applicant failed to file a timely appeal of the field office director's denial of the Form I-601.

When an inadmissible alien files both the Form I-601 and the Form I-212, the *Adjudicator's Field Manual,* provides the following guidance:

Chapter 43 Consent to Reapply After Deportation or Removal

43.2 Adjudication Process:

(c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider

> the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

In that the field office director has found the applicant to be ineligible for a waiver of inadmissibility under section 212(i) of the Act and the applicant failed to file a timely appeal, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Accordingly, the appeal of the field office director's denial of the Form I-212 will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.