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



U.S. Citizenship
and Immigration
Services

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H4

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 26 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:

Self-represented

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, California 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.

It is noted that the application was prepared by an immigration service provider/counsel and the appeal is in care of the address of the immigration service provider/counsel. The application and the appeal were not accompanied by a Form G-28, Notice of Entry of Appearance by an Attorney or Representative. The immigration service provider/counsel has not established that it is a licensed attorney or an accredited representative authorized to undertake representations on the applicant's behalf. *See* 8 C.F.R. § 292.1. All representations will be considered but the decision will be furnished only to the applicant.

The applicant is a native and citizen of Guatemala who, on November 16, 1995, was placed into immigration proceedings after entering the United States without inspection. On October 11, 1996, the immigration judge denied the applicant's applications for asylum and withholding of removal and granted him voluntary departure until November 12, 1996. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. The applicant appealed to the Board of Immigration Appeals (BIA). On May 30, 1997, the BIA dismissed the applicant's appeal as untimely filed. The applicant filed a motion to reopen with the BIA. On September 30, 1997, the BIA denied the applicant's motion to reopen.

On October 17, 2003, the applicant married his lawful permanent resident spouse [REDACTED] in Santa Ana, California. On February 1, 2004, the applicant was removed from the United States and returned to Guatemala. On May 18, 2004, the applicant filed the Form I-212. On May 20, 2004, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on December 7, 2005. 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). 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 lawful permanent resident spouse.

The director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having accrued unlawful presence in United States for more than one year. The director determined that the applicant was ineligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years and denied the Form I-212 accordingly. *See Director's Decision*, dated April 7, 2006.

On appeal, the applicant contends that his spouse needs him in the United States. *See Form I-290B*, dated May 4, 2006. In support of his contentions, the applicant submits the referenced Form I-290B and a copy of the approval notice for the Form I-130. 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.

The applicant and counsel, by indicating on the Form I-212 that the applicant resided in Guatemala, assert that the applicant has remained outside the United States and lived in Guatemala since he was removed on February 11, 2004.¹

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II) for being unlawfully present in the United States for more than one year, from April 1, 1997, the date on which unlawful presence provisions were enacted, and February 11, 2004, the date on which he departed the United States, and is seeking admission within ten years of his last departure. To seek a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), 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.

¹ The AAO notes that the record contains conflicting information in regard to the applicant's whereabouts and whether he has illegally reentered the United States at any time after his 2004 removal. The record contains evidence that the applicant mailed a motion to reopen and the Form I-290B from within the United States. The AAO notes that the envelopes reflect that these applications were filed by the applicant and not by counsel or the applicant's spouse. On appeal, the applicant fails to provide his address and indicates that his correspondence should be sent in care of counsel's address. The applicant makes statements on the Form I-290B to indicate that he was present in the United States: "because I help her out with her two children, both emotionally and economically." Furthermore, the applicant has failed to provide evidence to establish that he has remained outside the United States since his removal in 2004. If it is later confirmed that the applicant illegally reentered the United States at any time after his 2004 removal, 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 (9th Cir. 2007).