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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



FILE: [REDACTED] Office: DALLAS, TX

Date: **MAY 27 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:



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, Dallas, Texas, 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 Nigeria who, on January 2, 1995, was apprehended by immigration officers at a checkpoint in Laredo, Texas. At the time of apprehension the applicant presented a photocopy of a lawful permanent resident card and a driver's license bearing the name [REDACTED]. The applicant was placed into secondary inspections. The applicant testified that he was the true owner of the lawful permanent resident card and that he had lost the original card. After a search of the applicant's belongings and fingerprint results revealed that he was not the true owner of the lawful permanent resident card, the applicant admitted that the documents belonged to his friend. The applicant admitted that he had entered the United States without inspection in April 1992. On January 17, 1995, the applicant was convicted of illegally entering the United States in violation of 8 U.S.C. § 1325 and was sentenced to 15 days in jail. On the same day, the applicant was placed into immigration proceedings for having entered the United States without inspection.

On February 7, 1996, the immigration judge made a finding of adverse credibility and denied the applicant's applications for asylum and withholding of removal. The immigration judge granted the applicant voluntary departure until April 15, 1996. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On April 14, 2005, the applicant married his then lawful permanent resident spouse in Dallas, Texas. On May 15, 2001, the BIA dismissed the applicant's appeal and affirmed the immigration judge's finding of adverse credibility. The BIA granted the applicant 30 days of voluntary departure. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On April 30, 2001, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on October 10, 2005. On January 15, 2008, the applicant was removed from the United States and returned to Nigeria. On February 8, 2008, the applicant filed the Form I-212, indicating that he resided in Nigeria. 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 now naturalized U.S. citizen spouse and two U.S. citizen children.

The field office director determined that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for accruing more than one year of unlawful presence.¹ The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated June 9, 2008.

On appeal, counsel contends that the applicant warrants a favorable exercise of discretion. *See Counsel's Memorandum*, dated August 5, 2008. In support of his contentions, counsel submits the

¹ The AAO notes that the field office director erred in finding the applicant inadmissible pursuant to section 212(a)(9)(C)(i) since there is no evidence in the record to establish that the applicant has illegally reentered the United States since his 2008 removal. Section 212(a)(9)(C)(i) of the Act requires that an applicant, who has a previous immigration violation, have illegally reentered or attempted to illegally reenter the United States after having (1) accrued more than one year of unlawful presence; or (2) been removed from the United States.

referenced memorandum and letters from the applicant's family. 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 resides in Nigeria, assert that the applicant has remained outside the United States and lived in Nigeria since he was removed on January 15, 2008.²

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 June 15, 2001, the date on which voluntary departure expired and January 15, 2008, the date on which the applicant departed the United States, and is seeking admission within ten years of his last departure. To seek a waiver of this ground of inadmissibility under sections 212(a)(9)(B)(v), 212(i) and 212(g) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i) and 1182(g), 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.

² The AAO notes that if it is later confirmed that the applicant illegally reentered the United States at any time after his 2008 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).