

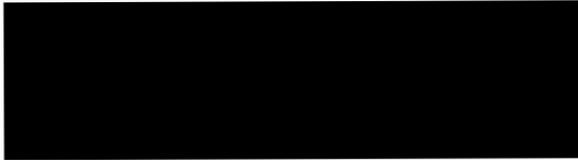
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



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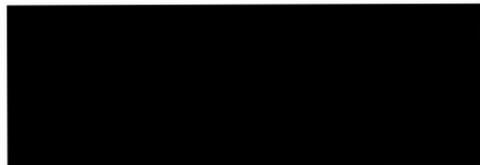
FILE: [REDACTED] Office: SAN FRANCISCO, CA

Date: **NOV 06 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)

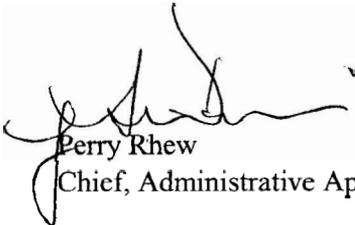
ON BEHALF OF APPLICANT:



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).


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 dismissed.

The applicant is a native and citizen of India who, on February 13, 1998, was admitted as a P-3 nonimmigrant. The applicant remained in the United States after his nonimmigrant status expired on February 23, 1998. On June 15, 1998, the applicant filed an Application for Asylum and Withholding of Removal (Form I-589). During the interview in regard to the Form I-589, the applicant admitted that the nonimmigrant visa he used to enter the United States had been obtained fraudulently. On July 28, 1998, the applicant's Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings for overstaying his nonimmigrant status. On June 4, 1999, the immigration judge made an adverse credibility finding against the applicant. The immigration judge denied the applicant's applications for asylum, withholding of removal and convention against torture and ordered him removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On December 2, 2002, the BIA upheld the immigration judge's finding of adverse credibility and dismissed the applicant's appeal. The applicant filed a petition for review with the Ninth Circuit Court of Appeals (Ninth Circuit). On May 8, 2003, the applicant also filed a stay of removal with the Ninth Circuit, which was granted until resolution of the petition for review. On August 24, 2003, the applicant married his then lawful permanent resident spouse, [REDACTED], in Las Vegas, Nevada. On March 30, 2004, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on July 29, 2004. On October 13, 2004, the Ninth Circuit's affirmed the immigration judge's finding of adverse credibility and denial of the applicant's petition for review was mandated. On December 27, 2004, the applicant was removed from the United States and returned to India, where he claims to have since resided.

On May 25, 2005, the applicant filed a Form I-212, which was denied on July 5, 2005. The applicant appealed the denial of the Form I-212. On June 29, 2006, the AAO dismissed the applicant's appeal. On July 27, 2007, the applicant filed the Form I-212, indicating that he continued to reside in India. 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) for a period of ten years. 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 did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated March 25, 2008.

On appeal, counsel contends that the field office director's decision was factually and legally erroneous. Counsel contends that the applicant deserves an exercise of favorable discretion. Counsel contends that the field office director failed to consider hardship to [REDACTED]. *See Counsel's Brief*, dated March 22, 2008. In support of his contentions, counsel submits the referenced brief, declarations, and financial and medical documentation. 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.

(iii) Waiver

The [Secretary], in the [Secretary's] discretion, may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

- (1) the alien's battering or subjection to extreme cruelty; and
- (2) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

Counsel and the applicant assert that the applicant has remained outside the United States and lived in India since he departed on December 27, 2004.¹

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining a nonimmigrant visa by fraud and gaining entry into the United States by presenting a fraudulently obtained nonimmigrant visa. To seek a waiver of this ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), an applicant must file an Application for Waiver of Grounds 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 if it is later confirmed that the applicant illegally reentered the United States at any time after his 2004 departure, 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).