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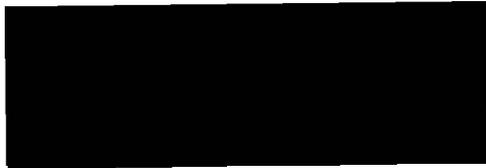
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: BUFFALO, NY Date: **NOV 09 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, Buffalo, New York 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 Yemen who, on September 26, 1995, was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past his authorized stay, which expired on October 10, 1995. On February 8, 2005, police officers apprehended the applicant. The applicant admitted that he was in the United States without authorization and that he had engaged in unauthorized employment. On November 9, 2005, the applicant was placed into immigration proceedings. On November 9, 2005, the immigration judge denied the applicant's applications for withholding of removal and voluntary departure and ordered him removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On February 27, 2007, the BIA dismissed the applicant's appeal. The applicant filed a motion to reopen with the BIA. On June 5, 2007, the BIA denied the applicant's motion to reopen. On August 2, 2007, a warrant for the applicant's removal was issued. On October 1, 2007, the applicant was removed from the United States and returned to Yemen, where he claims to have since resided.<sup>1</sup>

On September 5, 2007, the applicant filed a Form I-212. The applicant is inadmissible under 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 U.S. citizen child.

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 June 9, 2009

On appeal, counsel contends that the applicant's child needs her father. *See Form I-290B*. In support of his contentions, counsel submits the referenced Form I-290B and copies of documentation already in the record. 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

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<sup>1</sup> The AAO notes that, on appeal, it appears that the applicant is currently residing in Saudi Arabia. If it is later established that the applicant reentered the United States at any time after his removal in 2007, he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and he 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).

- 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.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United

States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant accrued unlawful presence in the United States from April 1, 1997, the date on which unlawful presence provisions were enacted, until October 1, 2007, the date on which he departed the United States. The applicant, therefore, is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing more than one year of unlawful presence and seeking admission within ten years of his last departure.

**Hardship to the alien himself is not a permissible consideration under the statute.** A section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant's child is also not a permissible consideration under the statute.

The record indicates that the applicant does not have a U.S. citizen or lawful permanent resident spouse or parents. The record reflects that the applicant is not currently married. The record reflects that the applicant's parents are citizens of Yemen. The applicant has never made any claims that his parents are lawful permanent residents or U.S. citizens.

The AAO finds that the applicant has no qualifying family members on which to base a waiver request under section 212(a)(9)(B)(v) of the Act. The AAO therefore finds that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act and is statutorily ineligible for relief pursuant to section 212(a)(9)(B)(v) of the Act.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is statutorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(9)(B)(i)(II) of the Act, which are very specific and applicable. The applicant is statutorily ineligible for a waiver of this ground of inadmissibility. Therefore, 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. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed as a matter of discretion.

**ORDER:** The appeal is dismissed.