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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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H4

FILE:

Office: CINCINNATI, OH

Date: OCT 06 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:

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 District Director, Cincinnati, Ohio, denied an 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 Italy who, on July 7, 2004, appeared at the Cincinnati, Ohio International Airport. The applicant presented his Italian passport containing a U.S. nonimmigrant visa. Immigration officers suspected that the applicant had immigrant intent and placed him into secondary inspection. The applicant admitted to living in the United States for many years and having the intent to reside in the United States and get married during this trip. The applicant admitted that he intended to apply for legal permanent residence. The applicant admitted that he had to get his birth certificate and the I-94 in order to apply for his permanent residence. The applicant admitted that he was receiving mail in the United States and that he was returning to the United States after his June 3, 2004 departure, to continue to live with his girlfriend. The applicant admitted that he had lived a long time in the United States with his girlfriend prior to this attempted entry and that he had a residence in the United States in San Francisco, California. The record reflects that from October 1998 until July 2004, the applicant resided outside the United States for only a total of six months. The record reflects that, each time the applicant entered the United States he remained in the country for 7 to 12 months and would exit the country for a period of one month before reentering the United States. The record reflects that on December 4, 2002, the applicant attempted to extend his nonimmigrant status even though he was not entitled to remain in the United States for more than 90 days because he entered under the visa waiver program. As such, the record reflects that the applicant was effectively residing in the United States despite purporting to be a nonimmigrant. The applicant was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without valid documentation. On July 8, 2004, 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 September 6, 2004, the applicant married his U.S. citizen spouse in Italy. On January 4, 2005, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on his behalf, which was approved on January 31, 2005. On August 28, 2006, the applicant filed the Form I-212, indicating that he resided in Italy.

On March 23, 2006, the applicant appeared at the Chicago O'Hare International Airport. The applicant presented his Italian passport. The applicant was placed into secondary inspection. The applicant stated that he had not intended to enter the United States, but was intending to travel through the United States to Canada in order to visit his wife. The United States, however, had terminated the Transit Without Visa (TWOV) and International-to-International (ITI) passenger programs on August 23, 2003. The applicant was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without valid documentation. On September 6, 2004, 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).

The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), for a period of twenty 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 U.S. citizen spouse.

On June 15, 2007, the district director determined that the applicant was required to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) in conjunction with a Form I-212 at the U.S. Consulate abroad and denied the Form I-212 accordingly. *See District Director's Decision*, dated June 15, 2007.

On appeal, counsel states that the U.S. Consulate only informed her to file the Form I-212 and that the applicant's Form I-212 was forwarded to the Cincinnati, Ohio district office by the U.S. Consulate. Counsel contends that the applicant is not inadmissible under any other section of the Act and is not required to file a Form I-601. Counsel contends that the district director erred in considering the applicant's second removal order because it is not before the Cincinnati, Ohio office at the time of adjudication.<sup>1</sup> Counsel contends that the applicant warrants a grant of permission to reapply for admission. *See Counsel's Brief*, dated August 15, 2007. In support of her contentions, counsel submits the referenced brief and hardship documentation. The entire record was reviewed in rendering a decision in this case.

On March 9, 2009, the AAO issued a Notice of Intent to Deny (NOID) enabling the applicant to rebut evidence establishing the unfavorable factors in his case such as his attempts to circumvent U.S. immigration laws by utilizing a nonimmigrant visa or his visa waiver country status to effectively permanently reside in the United States for a period of four years and two months; his intent to circumvent U.S. immigration laws by returning to the United States to marry his girlfriend and become a lawful permanent resident by utilizing a nonimmigrant visa; and the unlikelihood of his defense of innocence in regard to his second removal. The applicant responded, contending his innocence in these matters.<sup>2</sup> 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-

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<sup>1</sup> The AAO notes that any and all pertinent positive and negative factors may be considered in adjudicating the Form I-212, whether or not the factor existed at the time of filing.

<sup>2</sup> The AAO notes that the applicant's copies of Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act (Form I-867A), which are submitted in an attempt to prove the applicant's innocent intentions in regard to his entries, clearly reflect alterations made by the applicant. The applicant's copies, which the applicant purports to be photocopies of the original documents, differ from the originals in the record. The applicant purports to have crossed out certain statements in regard to claiming residence in the United States and his wish to withdraw his application for admission. The AAO notes that these actions reflect that the applicant continues to willfully misrepresent information material to his application for immigration benefits.

- (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 asserts that he has remained outside the United States and lived in Italy since his removals.<sup>3</sup>

While counsel and the applicant contend that the applicant is not inadmissible pursuant to any other section of the Act besides 212(a)(9)(A)(i) of the Act, the AAO finds the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for willful misrepresentation of a material fact by attempting to enter the United States as a nonimmigrant while he had an immigrant intent in 2002.<sup>4</sup> 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 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.

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<sup>3</sup> The AAO notes that, if it is later confirmed that the applicant illegally reentered the United States *at any time* after his 2004 or 2006 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).

<sup>4</sup> Discounting all of the applicant's prior entries into the United States while he had immigrant intent, the statements made by the applicant at the port of entry in 2002 clearly reflect that the applicant intended to remain in the United States and file for permanent residency after the attempted entry on July 7, 2004.