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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: OCT 20 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)

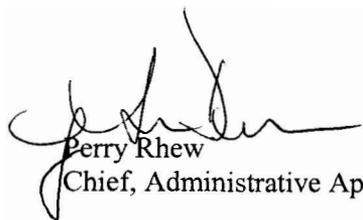
ON BEHALF OF APPLICANT:



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 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 Macedonia who, on June 13, 2002, filed an Application for Asylum or Withholding of Removal (Form I-589). On December 13, 2002, the applicant's Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings for having entered the United States without inspection on July 15, 2001. On January 24, 2003, the immigration judge found the applicant to have lied to the court. The immigration judge found the applicant not credible, denied his 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 April 19, 2004, the BIA dismissed the applicant's appeal. The applicant filed a petition for review with the Second Circuit Court of Appeals (Second Circuit). On February 1, 2006, the Second Circuit denied the applicant's petition for review. On October 17, 2006, a warrant for the applicant's removal was issued. The applicant failed to depart the United States.

On May 31, 2007, the applicant married his naturalized U.S. citizen spouse in Beacon Falls, Connecticut. On June 29, 2007, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on April 23, 2008. On May 28, 2008, the applicant was removed from the United States and returned to Macedonia. On July 7, 2008, the applicant filed the Form I-212, indicating that he resided in the United States. 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 naturalized U.S. citizen spouse.

On February 17, 2009, 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.*

On appeal, counsel contends that the applicant resides in Macedonia and the separation from his spouse has caused his spouse severe emotional and financial hardship. *See Counsel's Brief.* In support of his contentions, counsel submits the referenced brief, an affidavit from the applicant's spouse, country condition reports and psychological 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 of Homeland Security] 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 asserts that the applicant has resided outside the United States since his 2008 departure.<sup>1</sup>

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to obtain immigration benefits by willful misrepresentation of a material fact, as reflected in the immigration judge's findings. The applicant is also inadmissible pursuant to 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, from February 1, 2006, the date on which his petition for review was denied, and the date on which he departed the United States, and is seeking admission within ten years of his last departure. To seek waivers of these grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 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.

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<sup>1</sup> The AAO notes that there are inconsistencies in the record as to whether the applicant resides in the United States or in Macedonia. The Form I-212 indicates that the applicant resides in the United States. The AAO finds that counsel's and the applicant's spouse's statements are insufficient to establish that the applicant has remained outside the United States. The applicant will be required to show proof that he has resided outside the United States since his 2008 removal at the time of his immigrant visa interview. If it is later confirmed that the applicant illegally reentered the United States *at any time* after his 2008 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 (9<sup>th</sup> Cir. 2007).