

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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

Hy

FILE:

Office: NEWARK, NJ

Date: **SEP 10 2009**

MSC 05 354 19344

IN RE:

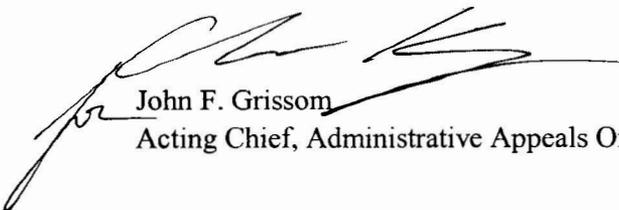
APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: Self-represented

**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, Newark, New Jersey, 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 El Salvador who, on December 1, 1994, filed a Request for Asylum in the United States (Form I-589) indicating that he had entered the United States without inspection in May 1991. On February 10, 1995, the applicant's Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings. On June 8, 1995, the immigration judge denied the applicant's applications for asylum and withholding of removal and granted him voluntary departure until July 8, 1995. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On November 17, 1995, the BIA dismissed the applicant's appeal and granted the applicant thirty 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 March 31, 1997, the applicant married [REDACTED]. On July 7, 1997, Ms. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on September 30, 1997. On October 21, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. On October 21, 1997, the applicant filed a motion to reopen with the BIA. On September 20, 2000, the BIA denied the applicant's motion to reopen.

On December 19, 2001, the applicant married his current U.S. citizen spouse in North Bergen, New Jersey. In 2001, the applicant applied for Temporary Protected Status (TPS).<sup>1</sup> The applicant was granted TPS from March 14, 2002 until September 9, 2002.<sup>2</sup> On April 26, 2002, the applicant's current spouse filed a Form I-130 on his behalf, which was approved on September 5, 2002. On June 15, 2004, the applicant was granted Authorization for Parole of an Alien into the United States (advance parole, Form I-512). On July 26, 2004, the applicant reentered the United States utilizing the Form I-512. On September 14, 2005, the applicant filed a second Form I-485 based on the second approved Form I-130. On the same day, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212, indicating that he resided in the United States. On March 25, 2008, the Form I-601 was terminated.<sup>3</sup> On February 17, 2009, the applicant's

---

<sup>1</sup> The AAO notes that the applicant, in first applying for TPS on July 9, 2001, indicated that he had never been placed into immigration proceedings. As such, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining immigration benefits by fraud in 2001.

<sup>2</sup> The AAO notes that, while the applicant was issued employment authorization and advance parole, the applicant has only been granted TPS from March 14, 2002 until September 9, 2002, from August 22, 2005 until September 9, 2006, from May 25, 2007 until September 9, 2007, and February 10, 2009 until September 9, 2009.

<sup>3</sup> The AAO notes that the field office director incorrectly terminated the applicant's Form I-601. The field office director incorrectly found that the applicant did not require a waiver requiring the filing of a Form I-601; however, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and requires a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and is also 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, from April 1, 1997, the date on which unlawful presence provisions were enacted, and July 2004, the date on which he departed the United States and returned to El Salvador, and

Form I-485 was denied. 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 and two U.S. citizen children.

On March 25, 2008, 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, the applicant contends that the field office director did not have all of the evidence to support a favorable finding and that he warrant a favorable exercise of discretion. *See Form I-290B*. In support of his contentions, the applicant submits the referenced Form I-290B, a letter from his spouse, financial documentation, school related documentation, country condition information, letters of recommendation, photographs 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 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. 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 record reflects that the applicant has resided outside the United States and lived in El Salvador since at least June 2, 2009, the date on which his passport was issued in El Salvador. The record reflects that the applicant filed a new immigrant visa application with the U.S. Embassy in San Salvador, El Salvador on June 17, 2009.<sup>4</sup>

---

<sup>4</sup> The AAO notes that there are inconsistencies in the record as to whether the applicant resides in the United States or in El Salvador. The Form I-212 indicates that the applicant resides in the United States, as does the Form I-290B; however, the record clearly reflects that the applicant is currently residing in El Salvador and appeared at the U.S. Embassy in San Salvador as recently as August 26, 2009 in an attempt to obtain an immigrant visa at the U.S. Embassy in San Salvador,

The AAO notes that the applicant is inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, for obtaining immigration benefits by fraud and for accruing more than one year of unlawful presence and seeking readmission within ten years of his last departure. To seek a waiver of these grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, an applicant must file a 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.

---

El Salvador. Additionally, if it is confirmed that the applicant illegally reentered the United States *at any time* after April 1, 1997, and prior to his July 26, 2004 reentry utilizing the Form I-512, 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).