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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
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FILE:



Office: BOSTON, MA

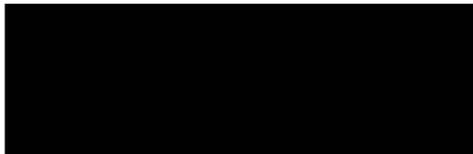
Date: SEP 30 2009

IN RE:



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

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 or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Brazil who was issued an order of exclusion and deportation on December 13, 1996, was deported on December 18, 1996 and was admitted to the United States on March 27, 1998 and February 1, 1999. The AAO notes that the applicant was wrongfully found inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I). The applicant did not accrue an aggregate period of more than one year of unlawful presence and enter or attempt to reenter the United States without being admitted, as required under section 212(a)(9)(C)(i)(I) of the Act. The correct ground of inadmissibility is section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as the applicant was ordered removed under section 240 prior to April 1, 1997 and reentered the United States within ten years of his removal without obtaining permission to reapply for admission into the United States. The applicant is considered to be seeking 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.

The field office director determined that a previously deported alien who is back in the United States is barred from receiving consent to reapply and denied the Form I-212, Application for Permission to Reapply for Admission After Deportation or Removal, accordingly. *Field Office Director's Decision*, at 2, dated August 12, 2008.

On appeal, counsel states that the applicant challenges some of the factual allegations in the decision, the decision was made in error based on these facts, and the applicant was not issued a notice of intent to deny. *Form I-290B*, at 2, received September 12, 2008.

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

(A) Certain alien 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 5 years of the dated of such removal (or within 20 years in the case of a second or subsequent removal...) . . . 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

The AAO has, in a separate decision, dismissed the applicant's appeal of the denial of the Form I-601, which the applicant filed in relation to his inadmissibility for willful misrepresentation under

section 212(a)(6)(C)(i) of the Act. When an inadmissible alien files both the Form I-601 and the Form I-212, the *Adjudicator's Field Manual* provides the following guidance:

Chapter 43 Consent to Reapply After Deportation or Removal

43.2 Adjudication Processes:

(d) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

In that the AAO has determined that the applicant is not eligible for a waiver of inadmissibility under section 212(i) of the Act and has dismissed his appeal of the Form I-601 denial, no purpose would be served in considering his application for permission to reapply for admission. Accordingly, the appeal of the field office director's denial of the Form I-212 is dismissed as a matter of discretion.

ORDER: The appeal is dismissed.