

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

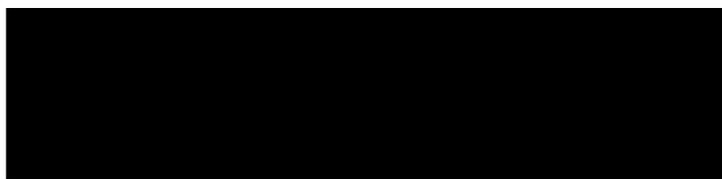
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

tl4



FILE:



Office: BUFFALO, NY

Date:

APR 05 2010

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 R. New
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 India who, on May 4, 1996, filed a Request for Asylum in the United States (Form I-589). On June 25, 1996, 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 June 25, 1992. On September 3, 1999, the immigration judge made a negative credibility finding against the applicant. The immigration judge denied the applicant's applications for asylum and withholding of removal, relief under the convention against torture, and voluntary departure. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On November 21, 2002, the BIA dismissed the applicant's appeal. The applicant failed to depart the United States.

On December 19, 2002, the applicant married his U.S. citizen spouse in Buffalo, New York. On February 13, 2003, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The applicant filed a motion to reopen with the BIA. On June 17, 2003, the BIA denied the applicant's motion to reopen. The applicant filed a second motion to reopen with the BIA. On September 24, 2003, the BIA denied the applicant's motion to reopen. The applicant filed a petition for review with the Second Circuit Court of Appeals (Second Circuit). On February 9, 2005, the Form I-130 was approved. On May 17, 2007, the Second Circuit found the adverse credibility finding against the applicant to be supported by the record and denied the applicant's petition for review. On July 9, 2007, the Second Circuit's decision mandated. On July 17, 2008, the applicant departed the United States and returned to India, where he claims he has since resided.¹

On July 18, 2008, the applicant filed the Form I-212, indicating that he resided in India. 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 U.S. citizen spouse, three U.S. citizen children and two adopted U.S. citizen children.

On June 10, 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*, dated June 10, 2009.

On appeal, counsel contends that the applicant warrants a favorable exercise of discretion. *See Counsel's Brief*. In support of her contentions, counsel submits the referenced brief, copies of financial documentation 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.-

¹ A Record of Verification (Form G-146) confirms the applicant's departure from the United States on this date.

- (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 of an 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.

The record reflects that the applicant has remained outside the United States and lived in India since July 17, 2007.²

The AAO notes that the applicant is 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 in the United States, from July 9, 2007, the date on which the Second Circuit denied the applicant's petition for review, until July 17, 2008, the date on which he departed the United States, and is seeking admission within ten years of his last departure. To seek a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), 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.

² The AAO notes that, if it is later found that the applicant illegally reentered the United States *at any time* after his 2007 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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).