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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**

HL

FILE:

Office: CHICAGO, IL

Date: APR 08 2010

IN RE:

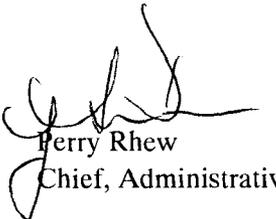
APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the 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 Lebanon who, on February 10, 1997, was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past his authorized stay, which expired on March 15, 1997. On October 6, 1997, the applicant filed an Application for Asylum and for Withholding of Deportation (Form I-589). On November 26, 1997, the applicant's Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings for remaining in the United States past his authorized stay. On July 8, 1998, 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 and voluntary departure. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On December 1, 2002, the applicant married his naturalized U.S. citizen spouse in Hillside, Illinois. On December 19, 2002, the BIA dismissed the applicant's appeal. The applicant filed a petition for review with the Seventh Circuit Court of Appeals (Seventh Circuit). On February 10, 2003, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On November 10, 2003, the Seventh Circuit dismissed the applicant's petition for review. On November 13, 2003, the applicant was removed from the United States and returned to Lebanon, where he claims he has since resided.

On December 22, 2004, the Form I-130 was denied. On June 6, 2007, the applicant's spouse filed a second Form I-130 on behalf of the applicant, which was approved on January 11, 2008. On November 24, 2008, the applicant filed the Form I-212, indicating that he resided in Lebanon. 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 August 26, 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 August 26, 2009.

On appeal, counsel contends that the applicant warrants a favorable exercise of discretion. *See Counsel's Brief*, dated October 30, 2009. In support of his contentions, counsel submits the referenced brief and copies of marriage, birth and divorce 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 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 Lebanon since November 13, 2003.¹

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 April 1, 1997, the date on which unlawful presence provisions were enacted, until November 13, 2003, the date on which he departed the United States, and is seeking admission within ten years of his last departure.² 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.

¹ The AAO notes that, if it is later found that the applicant illegally reentered the United States *at any time* after his 2003 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).

² The AAO finds that, while an application for asylum halts the accrual of unlawful presence during the period of time that it is pending and on appeal, in the applicant's case, since he engaged in unauthorized employment before and during the pendency of the application for asylum, the asylum application does not stop the accrual of unlawful presence. See *Section 212(a)(9)(B)(iii)(II)*. The Form I-130 and Biographical Information Sheet (Form G-325A), dated January 23, 2003, indicate that the applicant has been employed in various positions from May 1998 until the execution date of the Forms. The applicant was issued employment authorization valid from September 21, 1998 until September 21, 1999; December 14, 1999 until December 14, 2000; April 2, 2001 until April 1, 2002; and June 14, 2002 until June 13, 2003. As such, the applicant engaged in unauthorized employment between May 1998 and September 21, 1998; September 21, 1999 and December 14, 1999; December 14, 2000 and April 2, 2001; and April 1, 2002 and June 2002.