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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**

H4

FILE:

Office: VERMONT SERVICE CENTER

Date: **APR 20 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: 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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider or reopen. The motion to reopen or reconsider is dismissed. The order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Kenya who, on July 6, 1993, was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past his authorized stay. On April 4, 1994 the applicant filed a Request for Asylum in the United States (Form I-589). On September 29, 1994, the applicant appeared at John F. Kennedy International Airport. The applicant presented his Kenyan passport containing the same U.S. nonimmigrant visa he used to enter the United States on July 6, 1993. The applicant was placed into secondary inspection, where it was discovered that he had previously overstayed his nonimmigrant status and applied for asylum. On September 29, 1994, the applicant was placed into immigration proceedings. On January 4, 1995, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to surrender for removal or depart from the United States. On August 1, 2001, immigration officers apprehended the applicant. On September 26, 2001, the applicant was removed from the United States and returned to Kenya. On August 21, 2003, the applicant's U.S. citizen son, [REDACTED], filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on June 25, 2004.

On January 27, 2004, the applicant filed a Form I-212, which was denied on October 4, 2004. The applicant appealed the denial of the Form I-212. On August 23, 2005, the appeal was administratively closed. On November 17, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On February 7, 2007, the applicant filed a second Form I-212. The applicant claims to have resided in Canada since his removal. The applicant is inadmissible under 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 son.

The director determined that the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for illegally reentering the United States after having been removed. The director determined that the applicant was ineligible to apply for permission to reapply for admission under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), because he did not remain outside the United States for the required ten years and denied the Form I-212 accordingly. *See Director's Decision* dated May 21, 2007.

On appeal, the applicant stated that he left the United States on September 26, 2001 and has not returned. *See Applicant's Brief*, dated June 12, 2007. In support of his contentions, the applicant submitted the referenced brief and copies of passport pages indicating his travel to Canada.

On May 21, 2009, the AAO dismissed the applicant's appeal because he had obtained a visa and admission to the United States by fraud on multiple occasions and was, therefore, inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).<sup>1</sup> The AAO found that the

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<sup>1</sup> The record reflects that the applicant had obtained a Kenyan passport and at least three U.S. nonimmigrant visas under the name "[REDACTED]" and date of birth "April 14, 1956." The record reflects that the applicant has utilized

applicant has no qualifying family members on which to base a waiver request under section 212(i) of the Act, 8 U.S.C. § 1182(i), and was, therefore, statutorily ineligible for relief pursuant to section 212(i) of the Act. The AAO found that no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. *Decision of AAO*, dated May 21, 2009.

In the motion to reconsider or reopen, the applicant contends that his U.S. citizen son is a qualifying relative upon which he may apply for a waiver under section 212(i) of the Act. *See Letter Accompanying Motion to Reconsider or Reopen and Form I-290B*, dated June 16, 2009. In support of his motion to reconsider or reopen, the applicant submits the referenced letter and a copy of his son's U.S. Birth Certificate. The entire record was reviewed in rendering a decision in this case.

The regulation at 8 C.F.R. § 103.5(a) provides, in pertinent part:

*(2) Requirements for motion to reopen.*

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- a. The requested evidence was not material to the issue of eligibility;
- b. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- c. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

*(3) Requirements for motion to reconsider.*

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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these nonimmigrant visas to enter the United States on multiple occasions before and after his removal from the United States: May 5, 1995, August 2, 1995, June 16, 1996, March 13, 1997, December 8, 1997, April 28, 1998, May 22, 1998, May 3, 1999, June 18, 1999, July 13, 1999, September 7, 1999, May 15, 2000, October 16, 2000, April 3, 2001, February 25, 2003 and June 21, 2003.

In support of the motion to reopen or reconsider, the applicant apologizes for the use of one of his given middle names in order to enter the United States.<sup>2</sup> He states that he was afraid that his U.S. citizen daughter would be without a parent in the United States if he were not able to return because his wife died during his removal proceedings. He states that he is sorry for his actions. The applicant contends that his U.S. citizen son is a qualifying relative on which he can base a waiver request under section 212(i) of the Act. In support of the motion to reopen or reconsider, the applicant submits a copy of his son's U.S. Birth Certificate.<sup>3</sup>

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident *spouse or parent* of the applicant. A section 212(i) waiver may not be based upon extreme hardship to the applicant or his or her child(ren). As such, the applicant's U.S. citizen son is not a qualifying relative upon which he can base a waiver application under section 212(i) of the Act. As discussed in the AAO's decision, the record clearly reflects that the applicant does not have a U.S. citizen or lawful permanent resident parent or spouse.

As such, there can be no basis for a motion to reopen or reconsider unless it is established that the applicant had a U.S. citizen or lawful permanent resident spouse or parent at the time of the AAO's decision. There is no purpose in granting an applicant's Form I-212 if he or she is otherwise statutorily inadmissible.

After a careful review of the record, it is concluded that the applicant has failed to establish that the contentions submitted in the motion to reopen or reconsider meet the requirements of a motion to reopen or reconsider. Accordingly, the motion to reopen or reconsider is dismissed and the order dismissing the appeal is affirmed.

**ORDER:** The motion to reopen or reconsider is dismissed. The order dismissing the appeal will be affirmed.

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<sup>2</sup> The issuance of the passport and visa, and the applicant's admission into the United States cannot be characterized as mistakes based upon his use of his middle name because the applicant also altered his date of birth. Furthermore, the applicant admits that he knew he had no right to reenter the United States or to use his middle name in order to reenter the United States.

<sup>3</sup> The AAO notes that a copy of the applicant's U.S. citizen son's birth certificate is already in the record and was reviewed in rendering the decision to dismiss the applicant's appeal.