

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**

[REDACTED]

114

FILE: [REDACTED] Office: NEW YORK, NY

Date: **AUG 03 2010**

IN RE: [REDACTED]

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:

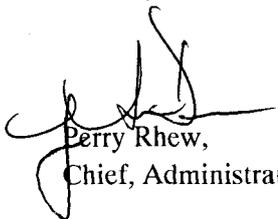
[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York, New York, 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 October 22, 1991, filed a Request for Asylum in the United States (Form I-589), indicating that he entered the United States without inspection in September 1991. The applicant failed to provide his true identity on the Form I-589 by providing an alternate date of birth. On January 29, 1999, the applicant's Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings for entering the United States without inspection. On August 21, 2001, the immigration judge denied the applicant's applications for asylum, withholding of removal and protection under the convention against torture, and ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). The applicant filed a motion to reopen with the immigration judge. On August 13, 2002, the immigration judge denied the applicant's motion to reopen. The applicant filed an appeal of the denial of the motion to reopen with the BIA. On August 11, 2003, [REDACTED] filed an Immigrant Petition for Alien Worker (Form I-140) based on an approved Alien Labor Certification (ALC) on behalf of the applicant. On September 30, 2003, the BIA dismissed the applicant's appeal. On March 26, 2004, the BIA dismissed the applicant's appeal of the denial of the motion to reopen. On November 19, 2004, the Form I-140 was denied. The applicant filed an appeal of the denial of the Form I-140. On March 8, 2005, the applicant's appeal was rejected. On July 7, 2005, [REDACTED] filed a second Form I-140 on behalf of the applicant, which was approved on February 7, 2006. On February 8, 2006, the applicant filed a motion to reopen with the BIA. On March 9, 2006, the BIA denied the motion to reopen. The applicant filed a petition for review with the Second Circuit Court of Appeals (Second Circuit). On November 17, 2006, the Second Circuit dismissed the applicant's petition for review. On February 16, 2007, the applicant was removed from the United States and returned to Lebanon, where he claims he has since resided.

On September 10, 2007, 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 and work in the United States.

On April 3, 2009, the district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision*, dated April 3, 2009.

On appeal, counsel contends that the district director's decision ignores the favorable factors in the applicant's case which offset the applicant's removal at government expense. *See Form I-290B*, dated May 1, 2009. In support of his contentions, counsel submits the referenced Form I-290B and letters of recommendation. On the Form I-290B, counsel indicates that he will forward additional evidence and/or a brief within thirty days. The regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B require the affected party to submit the brief or evidence directly to the AAO, not to the New York district office or any other federal office. The record does not contain the brief and/or evidence that counsel indicated would be submitted to the AAO. Even if counsel were to submit evidence that a brief was filed with an office other than the AAO, the AAO would not consider the

brief on appeal because counsel failed to follow the regulations or the instructions for the proper filing location. Accordingly the record is complete.

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 claims he has remained outside the United States and lived in Lebanon since February 16, 2007.<sup>1</sup>

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 February 16, 2007, the date on which he departed the United States, and is seeking admission within ten years of his last departure.<sup>2</sup> 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).

---

<sup>1</sup> 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).

<sup>2</sup> 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, during and after 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 record reflects that the applicant has been employed in various positions from at least 1993 until 2007. *See Recommendation Letters and Taxes*. The applicant was issued employment authorization valid from September 15, 1993 until September 14, 1994; December 5, 1994 until December 4, 1996; and February 5, 1997 until February 4, 2002. As such, the applicant engaged in unauthorized employment in 1993, between September 14, 1994 and December 5, 1994; December 4, 1996 and February 5, 1997; and February 4, 2002 through 2007.

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.

Beyond the decision of the district director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(9)(B)(i)(II) of the Act and the record reflects that he does not have a qualifying family member in order to qualify for a waiver under section 212(a)(9)(B)(v) of the Act. A section 212(a)(9)(B)(v) 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(a)(9)(B)(v) waiver may not be based upon extreme hardship to the applicant or his or her child(ren). As such, the applicant does not have qualifying relatives upon which he can base a waiver application under section 212(a)(9)(B)(v) of the Act. Therefore, the applicant is mandatorily inadmissible to the United States and no purpose would be served in the favorable exercise of discretion in adjudicating an application to reapply for admission into the United States.<sup>3</sup>

**ORDER:** The appeal is dismissed.

---

<sup>3</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).