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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: [REDACTED] Office: NEWARK, NJ

Date: **AUG 16 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)

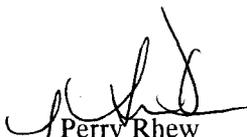
ON BEHALF OF APPLICANT: Self-represented

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 Field Office Director, Newark, New Jersey, 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 Ecuador who, on October 22, 2008, appeared at the Newark International Airport. The applicant presented his Ecuadorian passport containing a U.S. nonimmigrant visa. Immigration officers suspected that the applicant had immigrant intent and he was placed into secondary inspection. The applicant was found to be in possession of U.S. business cards in his name, multiple U.S. credit and discount cards and a U.S. company identification badge. The applicant admitted that he had spent the majority of the last four years in the United States. The applicant admitted that he knew it was illegal to work or reside in the United States. The applicant admitted that he did not have documentation permitting him to reside and work in the United States. The applicant admitted that he had recently married a U.S. citizen but continued to deny residing and working in the United States in violation of his prior entries, despite the large amounts of time he had remained in the United States. Initially the applicant claimed fear of returning to Ecuador but later withdrew that claim. The applicant was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without valid documentation. On November 17, 2008, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

On January 12, 2009, the applicant's U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on March 31, 2009. On April 24, 2009, the applicant filed the Form I-212 indicating that he resided in Ecuador. On May 11, 2009, the applicant appeared at the Brownsville, Texas port of entry. The applicant presented his Ecuadorian passport containing a U.S. nonimmigrant visa. The applicant was placed into secondary inspection. The applicant admitted that he was married to a U.S. citizen, but denied having any pending petitions or applications with U.S. Citizenship and Immigration Services (USCIS). The applicant insisted that he was simply visiting the United States, but admitted that he had been previously removed from the United States. The applicant admitted that he had previously worked in the United States as a "Consulter." The applicant admitted that, at the time of his marriage, his permanent address was located in New Jersey. The applicant was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act, for being an immigrant without valid documentation. On May 11, 2009, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) for a period of twenty years. 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.

On July 31, 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 July 31, 2009.

On appeal, the applicant contends that he was not employed in the United States and that his salary was deposited into his Ecuadorian savings account. The applicant contends that he was only in possession of U.S. bank account cards because his company requested that he obtain them to charge

expenses. The applicant contends that he was unaware that he had been removed from the United States and had been informed that his U.S. nonimmigrant visa remained valid and he could still travel to the United States. *See Applicant's Letter*, dated August 27, 2009. In support of his contentions, the applicant submits the referenced letter, copy of an offer of employment, copies of employment letters issued to obtain visas, copies of U.S. and foreign visas, a letter from his spouse, copies of credit cards, a copy of correspondence, and copies of airline reservations and 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.-

- (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. [emphasis added]

.....
(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 applicant claims that he has remained outside the United States since his May 11, 2009 removal.¹

While the applicant contends that he was not residing and working in the United States during his admissions as a nonimmigrant, the record reflects that, from 2005 through 2008, the applicant remained in the United States for more than six months of every year and traveled to other countries besides Ecuador for the period of time he was outside the United States. While the applicant was informed by his company's tax consultant that he was not required to file taxes in the United States as a foreign consultant, the correspondence does not indicate that the company or the tax consultant were aware that the applicant resided in the United States for as great a period of time as he did. While the applicant contends that he was only in possession of U.S. bank accounts and cards because his employer requested that he obtain them in order to charge business expenses, the record reflects that the applicant was issued an American Express account by the company from 2003 through 2007. The applicant has failed to provide any evidence that the U.S. bank accounts were not for his personal use. The applicant has failed to provide evidence of deposits of his salary into an

¹ 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).

Ecuadorian account or evidence that he maintained a viable residence in Ecuador. Moreover, the applicant has previously admitted that he was working in the United States as a "Consulter" and used an address in New Jersey as his permanent address. Finally, while the applicant claimed he had no pending USCIS petitions or applications, only wished to visit the United States, and was unaware that he required a waiver in order to reenter the United States, the record reflects that he had an approved immigrant visa petition and a pending Form I-212 at the time he sought to reenter the United States in 2009. Additionally, the record reflects that the applicant received full warnings in regard to his removal and the required waivers at the time of his removal in 2008 and the applicant admitted that he was aware that he had been previously removed from the United States at the time he was apprehended in 2009. *See Records of Sworn Statements in Proceedings Under Section 235(b)(1) of the Act*, dated October 23, 2008 and May 11, 2009.

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter and gaining admission by fraud by presenting a nonimmigrant visa with immigrant intent on multiple occasions, but specifically on October 22, 2008 and May 11, 2009. To seek a waiver of this ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), 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.