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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

[REDACTED]

H4

FILE:

Office: NEWARK, NJ

Date: DEC 06 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 \$630. 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,

[REDACTED]
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 Colombia who, on June 6, 1996, was admitted to the United States as a conditional resident based on [REDACTED] a U.S. citizen. On July 11, 1998, the applicant filed a Petition to Remove Conditions on Residence (Form I-751) based on her continued marriage to [REDACTED] was denied and her conditional residence was terminated based on a finding that the applicant entered into the marriage for the sole purpose of circumventing the immigration laws. On May 7, 2001, the applicant was placed into immigration proceedings. On January 29, 2002, the immigration judge found that the applicant had engaged in fraud and had entered into the marriage for the sole purpose of circumventing the immigration laws. The immigration judge granted the applicant voluntary departure until February 28, 2002. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On May 6, 2003, the BIA dismissed the applicant's appeal and granted her 30 days of voluntary departure. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On February 23, 2005, the applicant was removed from the United States and returned to Colombia where she claims to have since resided.

On April 7, 2006, the applicant's now naturalized U.S. citizen mother filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on October 16, 2006. On July 30, 2007, the applicant filed the Form I-212, indicating that she resided in Colombia. 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). She 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 her naturalized U.S. citizen mother.

On April 14, 2010, the field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. The field office director noted that the applicant is ineligible for approval of an application or petition under section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c). *See Field Office Director's Decision*, dated April 14, 2010.

On appeal, counsel states that the basis for the appeal will be based on the weight of the favorable factors. Counsel contends that the applicant's mother is very ill and the evidence will have a probative value. *See Form I-290B*, dated May 12, 2010. In support of her contentions, counsel submits only the referenced Form I-290B. On the Form I-290B, counsel indicates that she 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 Newark field 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.

....

The record reflects that the applicant has remained outside the United States and lived in Colombia since her removal.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 June 5, 2003, the date on which voluntary departure expired, until February 23, 2005, the date on which she departed the United States, and is seeking admission within ten years of her last departure. The applicant is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act,

¹ The AAO notes that, if it is later found that the applicant illegally reentered the United States *at any time* after her 2005 departure, she is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is ineligible for permission to reapply for admission until she 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).

8 U.S.C. § 1182(a)(6)(C)(i), for obtaining and attempting to obtain immigration benefits through marriage fraud. To seek a waiver of these grounds of inadmissibility under sections 212(a)(9)(B)(v)

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 field office director's decision, we find that section 204(c) of the Act bars approval of this application because the applicant has previously sought to be accorded immediate relative status as the spouse of a citizen of the United States by reason of a marriage determined by an immigration judge and the Newark Field Office to have been entered into for the purpose of evading the immigration laws.² The AAO finds that the applicant deliberately misled immigration officers to believe that she and [REDACTED] had continued to reside with each other, even though [REDACTED] admitted that he had only resided with the applicant for a period of six months. The AAO also finds that the documentation submitted by the applicant in order to establish a legitimate marriage was either fraudulent or fabricated in an attempt to establish joint residence and a bonafide marriage, or did not prove a legitimate relationship between the applicant and [REDACTED]. Thus, there are sufficient grounds to find that the applicant entered into the marriage in order to circumvent U.S. immigration laws. Section 204(c) of the Act consequently bars approval of the instant application or any other petition or application.

ORDER: The appeal is dismissed.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office 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 (9th 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).