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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:

[REDACTED]

Office: DETROIT, MI

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,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Detroit, Michigan, 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 Haiti who, on October 11, 2000, filed an Application for Asylum and Withholding of Deportation (Form I-589). On May 29, 2003, the applicant's Form I-589 was referred to an immigration judge and the applicant was placed into removal proceedings for entering the United States without inspection on August 10, 2000. On March 15, 2006, 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. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On March 12, 2007, the applicant married his naturalized U.S. citizen spouse. On July 31, 2007, the BIA dismissed the applicant's appeal. On August 16, 2007, the applicant departed the United States and entered Canada, where he claims he has since resided.

On March 2, 2008, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on June 18, 2008. On September 19, 2008, the applicant filed the Form I-212, indicating that he resided in Canada. 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 U.S. citizen stepchild.

On March 19, 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 March 19, 2009.

On appeal, counsel contends that the field office director abused his discretion in denying the Form I-212. *See Form I-290B*, dated April 20, 2009. In support of his contentions, counsel submits the referenced Form I-290B, copies of medical documents and copies of 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.

....

The record reflects that the applicant has remained outside the United States and lived in Canada since August 16, 2007.¹

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 August 10, 2000, the date on which he entered the United States, until August 16, 2007, 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

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).

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 record reflects that the applicant was employed in the United States since at least October 2001 until August 2007. The applicant was issued employment authorization valid from July 1, 2002 until July 1, 2003; May 16, 2004 until May 15, 2006; and May 22, 2006 until May 21, 2008. As such, the applicant engaged in unauthorized employment between October 2001 and July 1, 2002; July 1, 2003 and May 16, 2004; May 15, 2006 and May 22, 2006.

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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.