U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 20 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

[redacted]

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 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. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Rhew

/Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Service Center Director, Vermont, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude; and pursuant to section 212(a)(2)(B) as an alien who was convicted of an aggravated felony. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that even though the applicant had demonstrated extreme hardship to a qualifying relative, his aggravated felony conviction permanently barred him from admission to the United States. The director, consequently, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) as a matter of discretion.

On June 12, 2005, the applicant was removed from the United States in accordance with section 237(a)(2)(A)(iii) of the Act, as an alien convicted of an aggravated felony. The applicant sought 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). On October 16, 2007, the director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212), finding that the unfavorable factors in the applicant's case (his convictions involving moral turpitude) outweighed the favorable factors. The applicant now 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 with his U.S. citizen spouse, daughter, and step-son.

The director indicates in the letter dated October 16, 2007 that the applicant was removed from the United States and is therefore inadmissible to the United States pursuant to section 212(a)(9)(C) of the Act. However, we note that the record establishes that the applicant is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), as an applicant seeking readmission after previously being removed.

Section 212(a)(9)(A) of the Act stated, in pertinent parts:

> (A) Certain aliens previously removed
>
> . . .
>
> (ii) Other aliens
>
> Any alien not described in clause (i) who--
>
> (I) has been ordered removed under section 1229a of this title 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 Attorney General has consented to the alien's reapplying for admission.

In a Notice of Appeal to the AAO (Form I-290B) dated November 2, 2007, counsel contends that the director abused his discretion in denying the applicant's Form I-212.

The AAO notes that when an applicant must file a Form I-212 and a Form I-601, the adjudicator's field manual clearly states that the Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual states, "If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose."

The applicant's Form I-601 has been denied, and the applicant's appeal of that decision is dismissed in a separate decision by the AAO. Thus, no purpose would be served in addressing the merits of the applicant's Form I-212 appeal as an approval of his Form I-212 would serve no purpose. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.