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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



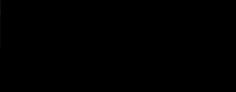
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: NEWARK, NJ
RELATES)

Date:

JAN 06 2010

IN RE:



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:



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 or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

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 the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen is dismissed. The order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Peru who, on June 13, 2000, appeared at the El Paso, Texas port of entry. The applicant presented a DSP-150 nonresident border crossing card bearing the name [REDACTED]. The applicant was placed into secondary inspections. The applicant admitted that he was not the true owner of the document and did not possess legal documentation to enter the United States. The applicant indicated that he intended to enter the United States in order to work. The applicant failed to provide his true identity to immigration officers. The applicant also indicated that he was a citizen of Mexico. The applicant admitted that he had previously attempted to enter the United States at the same port of entry earlier that morning with other fraudulent documentation and had been permitted to return voluntarily to Mexico. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud. On June 13, 2000 and, 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) under the name [REDACTED] and returned to Mexico.

On July 24, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Relative (Form I-130) filed on his behalf by his naturalized U.S. citizen spouse. On November 30, 2006, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) Newark, New Jersey Field Office. The applicant testified that he had entered the United States without inspection on June 13, 2000. While the applicant admitted to being previously arrested by immigration officers, he only indicated that he had been permitted to return voluntarily. The applicant failed to indicate that he had been removed from the United States or that he had attempted to enter the United States by fraud. On July 14, 2008, the Form I-485 was denied. On August 27, 2008, the applicant filed the Form I-212, indicating that he continued to reside in the United States. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 remain in the United States and reside with his U.S. citizen spouse, three U.S. citizen children and two lawful permanent resident adult children.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The field office director determined that the applicant was not eligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated December 12, 2008.

On July 16, 2009, the AAO dismissed the applicant's appeal because the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The field office director determined that the applicant

was not eligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years. *Decision of AAO*, dated July 16, 2009.

In her motion to reopen, counsel contends that the applicant has particularly strong equities and his removal from the United States would cause his spouse and children extreme hardship. *See Counsel's Motion to Reopen*. In support of her motion to reopen, counsel submits copious documentation on the hardships the family will suffer.

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 on a 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 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 of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver

The Secretary of Homeland Security 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—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

8 C.F.R. § 103.5(a) provides, in pertinent part:

(2) *Requirements for motion to reopen.*

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- a. The requested evidence was not material to the issue of eligibility;
- b. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- c. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

(3) *Requirements for motion to reconsider*

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel did not state any incorrect applications of law or policy and did provide any pertinent precedent decisions to establish an incorrect application of law or policy by the director or the AAO. The AAO, therefore, finds that counsel has not met the requirements for a motion to reconsider.

The applicant's Form I-212 was denied because the applicant is *statutorily ineligible* to apply for permission to reapply for admission. An alien must be currently outside the United States and have been outside the United States for a period of ten years before he or she can even apply for permission to reapply for admission into the United States, unless he or she meets the requirements for a waiver as a battered spouse. There are no indications in the record and counsel does not contend that the applicant is or should be classified as a battered spouse. As such, the documentation submitted by counsel regarding the hardships the family will suffer has no bearing on the outcome of this office's decision since the documentation does not establish that the applicant is eligible to apply for permission to reapply for admission. The AAO, therefore, finds that counsel has not met the requirements for a motion to reopen.

After a careful review of the record, it is concluded that the applicant has failed to establish that the contentions submitted in the motion to reopen meet the requirements of a motion to reopen. Accordingly, the motion to reopen is dismissed and the order dismissing the appeal is affirmed.

ORDER: The motion to reopen is dismissed. The order dismissing the appeal will be affirmed.