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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: [REDACTED] Office: SAN FRANCISCO, CA

Date: **JAN 12 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)

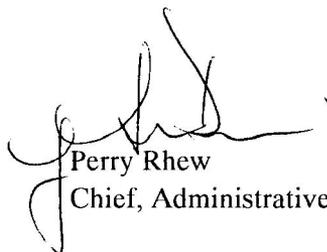
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

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 District Director, Houston, Texas, 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 and reconsider. The motion to reopen and reconsider is dismissed. The order dismissing the appeal will be affirmed.

The applicant is a native and citizen of India who, on June 17, 2001, was admitted to the United States as a nonimmigrant. The applicant applied for and was granted an extension of his nonimmigrant status until January 16, 2002. On December 4, 2001, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On March 7, 2002, the applicant's Form I-589 was referred to the immigration judge and the applicant was placed into immigration proceedings. On May 30, 2002, the immigration judge denied the applicant's applications for asylum, withholding of removal and convention against torture, making a finding of adverse credibility against the applicant. The immigration judge ordered the applicant removed from the United States. The applicant appealed to the Board of Immigration Appeals (BIA). On November 6, 2003, the BIA dismissed the applicant's appeal. The applicant filed a petition for review with the Ninth Circuit Court of Appeals (Ninth Circuit). On July 11, 2006, the Ninth Circuit upheld the immigration judge's adverse credibility finding and denied the applicant's petition for review. On December 12, 2006, the applicant was removed from the United States and returned to India.

The applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to January 9, 2007, the date on which he attended a dental appointment in California.¹ On July 31, 2007, the applicant filed the Form I-212, indicating that he resided in India.² The applicant is inadmissible under 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 and reside with his U.S. citizen spouse.

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 February 25, 2008.

On April 24, 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 April 24, 2009.

¹ The AAO notes that the applicant and counsel indicate that the applicant resides in India; however, the record contains a dental claim from Delta Dental that reflects that the applicant received a periodic oral evaluation and cleaning from [REDACTED] on January 9, 2007, in California.

² Whether the applicant has departed the United States since his illegal reentry after removal has no bearing on whether the applicant is inadmissible pursuant to section 212(a)(9)(C) of the Act. Such a departure only has an effect on when the applicant will become eligible for permission to reapply for admission.

In her motion to reopen or reconsider, counsel contends that the AAO denied the applicant's Form I-212 based on a mistaken determination that the applicant had illegally reentered the United States after having been removed. *See Counsel's Motion to Reopen and Reconsider.*

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.

In support of her motion to reopen, counsel submits a letter from the applicant's spouse, an affidavit from the applicant, letters from India and a letter purporting to be from the dentist in the United States. Counsel contends that the applicant has not reentered the United States since his removal on December 12, 2006. Counsel contends that the documentation she submits with the motion to reopen establishes that the applicant was not actually treated or seen by [REDACTED] on January 9, 2007. Counsel contends that the applicant had blood work performed in India on January 7, 2007 and that the applicant has been consistently employed in India since December 29, 2006.

A letter from the applicant's spouse states that the applicant departed the United States on December 12, 2006 and that the applicant has not returned to the United States since that date. A Nonjudicial Affidavit from the applicant states that he has not reentered the United States since his removal on December 12, 2006. A letter from [REDACTED] India, states that [REDACTED] has been employed with the facility since December 29, 2006 as a pharmacy assistant from Monday through Saturday. The letter states that [REDACTED] has not been absent from his employment for more than three days.

Documentation from [REDACTED] India, reflects that blood work results for a 41-year old [REDACTED] were issued on January 7, 2007. An attached letter from [REDACTED] dated May 6, 2009, states that [REDACTED] appeared at the laboratory for routine checkup on January 7 and January 8, 2007. The AAO notes that, although the letter attached to the blood work results reflects the correct date of birth for the applicant, the blood work results reflect that the patient was 41-years old at the time, while the applicant would have been 40 at the time the blood work was performed.

A letter from [REDACTED] dated May 1, 2009, states that the applicant was not treated or seen for a cleaning and exam on January 9, 2007 and that it was an error on the biller's part to make a claim on that day. The letter states that the last treatment the applicant received was performed on November 29, 2006. The AAO notes that the letterhead and signature on this letter does not match the dentist listed on the medical claim the AAO referenced in its decision. The dentist's office listed on the claims is [REDACTED]. Furthermore, in attempting to contact the individual purporting to be the applicant's dentist in the letter, the phone number has been disconnected and is not in service.

The AAO notes that all the documentation submitted by counsel to support the motion to reopen and reconsider are photocopies. The AAO will not accept any photocopied documentation as evidence to overcome the above derogatory information and, pursuant to *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988), the applicant cannot overcome the above findings simply by offering self-written explanations. As such, the AAO cannot accept the documentation submitted by counsel as authentic, especially in light of this office's inability to independently verify the information contained therein.

As such, counsel did not submit evidence or provide information regarding new facts to be provided upon a reopening of the applicant's case. 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 and reconsider meet the requirements of a motion to reopen or reconsider. Accordingly, the motion to reopen and reconsider is dismissed and the order dismissing the appeal is affirmed.

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