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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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JAN 26 2010

FILE:

Office: ISLAMABAD, PAKISTAN

Date:

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:

Self-represented

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Officer in Charge, Islamabad, Pakistan, 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 Pakistan who, on February 20, 2003, was placed into immigration proceedings for having entered the United States without inspection in May 2001. On March 13, 2003, the applicant's naturalized U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On May 11, 2005, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States.

On June 24, 2005, the applicant appeared for an interview in regard to the Form I-130. The applicant testified that he had entered the United States without inspection in May 1998 and resided in the United States for a period of eight to ten months prior to traveling to Canada. The applicant testified that he reentered the United States without inspection one or two years after he departed the United States. On June 24, 2005, the Form I-130 was approved. The applicant filed a motion to reopen immigration proceedings with the immigration judge. On June 30, 2005, the motion to reopen was denied. The applicant filed an appeal of the motion to reopen with the Board of Immigration Appeals (BIA). On January 31, 2006, the BIA remanded the applicant's case to the immigration judge. On April 4, 2006, the immigration judge found that the applicant had departed the United States in December 2005, effecting self-deportation, and found that the prior *in absentia* order still stood.

On August 17, 2006, the applicant filed the Form I-212. On November 6, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On April 20, 2007, the Form I-601 was denied. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 U.S. citizen spouse.

The officer in charge 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). The officer in charge 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 officer in charge denied the Form I-212 accordingly. *See Officer in Charge Decision*, dated April 20, 2009.

On appeal, the applicant states that he is appealing the denial of the Form I-212. *See Form I-290B*, dated May 18, 2007. In support of his appeal, the applicant submits the referenced Form I-290B, medical documentation and statements from the applicant, his spouse and friends. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In a separate proceeding, the officer in charge, Islamabad, Pakistan found the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act and ineligible for a waiver pursuant to section 212(a)(9)(B)(v) of the Act. The applicant failed to file a timely appeal of this denial.¹

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

In that the officer in charge has found the applicant to be ineligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, and the applicant failed to file a timely appeal of the officer in charge's decision, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Accordingly, the appeal of the officer in charge's denial of the Form I-212 will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

¹ The AAO notes that a separate Form I-290B must be filed in regard to each application in which an appeal is sought.