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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



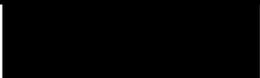
U.S. Citizenship
and Immigration
Services

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FILE:



Office: ROME, ITALY

Date:

JUL 27 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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:



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 \$585. 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 application for permission to reapply for admission after removal was denied by the District Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, Ms. [REDACTED], is a native and citizen of Spain 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 to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h); and section 212(i) of the Act, 8 U.S.C. § 1182(h). On July 26, 2007, the director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

The applicant was found to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) as an applicant seeking readmission after previously being removed. The applicant was admitted to the United States on August 22, 2001 with a B2 visitor's visa under the Visa Waiver Pilot Program with authorization to remain in the country until November 23, 2001. She remained in the United States beyond that period without authorization, and on December 18, 2001, the director ordered that the applicant be deported from the United States and issued a warrant of deportation. The applicant was deported from the United States on January 4, 2002. 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 July 26, 2007, the director concluded that the approval of the applicant's Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) would serve no purpose as the applicant's waiver for a ground of inadmissibility had been denied. Accordingly, the applicant's Form I-212 was denied.

In a Notice of Appeal to the AAO (Form I-290B) dated August 20, 2007 counsel contends that the Form I-601 was erroneously denied and that once it is granted the applicant's Form I-212 should be reconsidered.

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

Aliens previously removed.-

(A) Certain alien previously removed.-

....

(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 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

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 on May 11, 2010, the AAO dismissed the applicant's subsequent appeal. Thus no purpose would be served in discussing the applicant's Form I-212, as an approval of his Form I-212 would serve no purpose. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.