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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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H4

[REDACTED]

FILE:

Office: CHICAGO, IL

Date:

MAY 17 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)

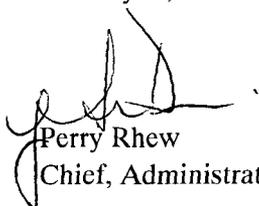
ON BEHALF OF APPLICANT: Self-represented

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 Field Office Director, Chicago, Illinois, 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 Poland who, on August 1, 1992, was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past his authorized stay, which expired on February 1, 1993. On February 15, 1997, the applicant married [REDACTED], a naturalized U.S. citizen, in Chicago, Illinois. On June 19, 1997, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On December 10, 2001, the applicant was placed into immigration proceedings for remaining in the United States past his authorized stay. On May 17, 2005, a Notice of Intent to Deny (NOID) the Form I-130 was issued. On September 9, 2005, [REDACTED] filed for divorce. On November 22, 2005, the Form I-130 was denied. On December 1, 2005, the immigration judge denied the applicant's motion for continuance and application for voluntary departure. The immigration judge ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On July 29, 2006, [REDACTED] passed away. On March 21, 2007, the BIA dismissed the applicant's appeal. On June 19, 2007, the applicant filed a Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360). On the same day, the applicant filed a motion to reopen with the BIA. On August 30, 2007, the BIA denied the applicant's motion to reopen. On November 27, 2007, the applicant was removed from the United States and returned to Poland, where he claims he has since resided.¹

On April 24, 2008, the Form I-360 was approved. On October 16, 2008, the applicant filed the Form I-212, indicating that he resided in Poland. The applicant is inadmissible pursuant to 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 with his naturalized U.S. citizen adult daughter.

On June 29, 2009, 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 June 29, 2009.

On appeal, the applicant contends that the field office director's decision is unjust and based on false information and that separation from his daughter and her children is an emotional hardship. *See Form I-290B*, dated October 30, 2009. In support of his contentions, the applicant submits the referenced Form I-290B and a letter. The entire record was reviewed in rendering a decision in this case.

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

¹ The record contains an executed Record of Departure (Form I-392) reflecting the applicant's departure from the United States.

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 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 [Secretary of Homeland Security] 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] has consented to the alien's reapplying for admission.

(iii) Waiver

The [Secretary], in the [Secretary's] discretion, 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—

- (1) the alien's battering or subjection to extreme cruelty; and
- (2) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The record reflects that the applicant has remained outside the United States and lived in Poland since November 27, 2007.²

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing more than one year of unlawful presence in the United States, from April 1, 1997, the date on which unlawful presence provisions were enacted, until November 27, 2007, the date on which he departed the United States, and is seeking admission within ten years of his last departure. To seek a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601).

Beyond the decision of the field office director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(9)(B)(i)(II) of the Act and is statutorily ineligible for relief pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). A section 212(a)(9)(B)(v) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident *spouse or parent* of the applicant. A section 212(a)(9)(B)(v) waiver may not be based upon extreme hardship to the applicant or his or her child(ren). As such, the applicant's U.S. citizen daughter is not a qualifying relative upon which the applicant can base a waiver application under section 212(a)(9)(B)(v) of the Act. The record clearly reflects that the applicant does not have a U.S. citizen or lawful permanent resident parent or spouse. The AAO finds that 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.³

² The AAO notes that, if it is later found that the applicant illegally reentered the United States *at any time* after his 2007 departure, he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is ineligible for permission to reapply for admission until he has remained outside the United States for a period of ten years. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

As required by 8 C.F.R. § 212.2(d), an immigrant visa applicant who is outside the United States and requires both a waiver and permission to reapply for admission must simultaneously file the Form I-601 and the Form I-212 with the U.S. Consulate having jurisdiction over the applicant's place of residence. As the applicant has not complied with the regulatory requirements for filing the Form I-212, the application in this matter was improperly filed. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.