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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

H4

FILE:



Office: HIALEAH, FL

Date: **OCT 08 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: 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, Hialeah, Florida, 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 The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of India who, on August 11, 1994, was admitted to the United States as a C-1 nonimmigrant. The applicant remained in the United States past his authorized stay which expired on September 9, 1994. On October 19, 1995, the applicant filed an Application for Asylum and for Withholding of Deportation (Form I-589). On December 8, 1995, the Form I-589 was referred to an immigration judge and the applicant was placed into removal proceedings. On January 16, 1996, the immigration judge denied the applicant's application for asylum and withholding of removal and granted voluntary departure until December 16, 1996. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On October 27, 1997, the BIA dismissed the applicant's appeal and granted thirty days of voluntary departure. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal.

On February 14, 2003, the applicant married his U.S. citizen spouse, in Miami, Florida. On August 19, 2003, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on August 19, 2004. On June 15, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On December 5, 2007, the Form I-485 was terminated. On February 4, 2008, the applicant was removed from the United States and returned to India where he claims he has since resided.

On January 19, 2009, the applicant filed the Form I-212.¹ 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 U.S. citizen spouse and two U.S. citizen children.

The field office director determined that 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 and is ineligible for permission to reapply for admission and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated August 10, 2009.²

On appeal, the applicant's spouse contends that the only mistake the applicant made was to overstay his nonimmigrant visa. *See Form I-290B*, dated September 7, 2009. In support of her contentions,

¹ The AAO notes that the Form I-212 was completed by the applicant's spouse and does not indicate the location of the applicant; however, documentation attached to the Form I-212 and appeal indicates that the applicant has remained in India since his removal.

² The AAO notes that the field office director erred in denying the Form I-212 for inadmissibility under section 212(a)(9)(C) of the Act because the record does not reflect that the applicant has reentered the United States without inspection since his removal; however, the applicant improperly filed the Form I-212 since he was required to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) in conjunction with the Form I-212 with the U.S. consulate abroad.

the applicant's spouse submits the referenced Form I-290B and copies of educational documentation. 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 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 has consented to the alien's reapplying for admission.

The record reflects that, on October 5, 2009, the applicant correctly filed a Form I-601 in conjunction with a Form I-212 with the U.S. Consulate in Mumbai, India. On January 25, 2010, both the Form I-601 and Form I-212 were approved. As such, the record reflects that the applicant is no longer inadmissible pursuant to section 212(a)(9)(A) of the Act.³

³ The AAO notes, however, that if the applicant fails to legally enter the United States after approval of the Form I-601 and Form I-212, the approval of the Form I-212 is automatically revoked, and, if it is later found that the applicant has entered or attempted to enter the United States without being admitted, he will become inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and 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).

The AAO therefore finds that the applicant is currently not required to apply for permission to reapply for admission to the United States because there is no evidence in the record that the applicant has reentered the United States illegally since his removal or approval of the Form I-212. Since the applicant does not require permission to reapply for admission, the appeal will be dismissed, the decision of the field office director will be withdrawn and the application for permission to reapply for admission will be declared moot. However, the AAO notes that the applicant may need to file an application for permission to reapply for admission if it is later established that he has entered or attempted to enter the United States without being admitted or is inadmissible under another section of the Act.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the application for permission to reapply for admission is declared moot.