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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:

[REDACTED]

Office: HOUSTON, TX

Date: OCT 25 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:

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, Houston, Texas, 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 The field office director's decision will be withdrawn and the application remanded for entry of a new decision.

The applicant is a native and citizen of Nigeria who, on April 2, 2006, was placed into immigration proceedings for having entered the United States by fraud by presenting an altered Canadian passport bearing the name [REDACTED]. During immigration proceedings the applicant admitted that she had entered the United States in 1995 or 1996 and remained in the United States until October 11, 2003 without lawful status. On June 22, 2006, the immigration judge denied the applicant's applications for adjustment of status, asylum, withholding of removal and protection under the convention against torture. The immigration judge ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On August 17, 2007, the applicant married [REDACTED] ([REDACTED]), a lawful permanent resident. On September 25, 2007, the BIA dismissed the applicant's appeal. The applicant failed to depart the United States.

On May 4, 2009, the applicant filed the Form I-212, indicating that she resided in the United States. On June 1, 2009, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). 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). She 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 her lawful permanent resident spouse and four U.S. citizen children.<sup>1</sup>

The field office director determined that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for seeking admission within ten years of her last departure after having accrued more than one year of unlawful presence in the United States.<sup>2</sup> The field office director determined that the applicant was required to file the Form I-601 and Form I-212 simultaneously with the U.S. Consulate abroad. The field office director determined that the Form I-212 could not be approved where other grounds of inadmissibility exist and no purpose would be served in adjudicating the Form I-212. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated February 4, 2010.

On appeal, counsel contends that the applicant has several favorable factors that warrant a favorable exercise of discretion. *See Counsel's Brief*, undated. In support of his contentions, counsel submits the referenced brief, copy of an unpublished AAO decision and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

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<sup>1</sup> The AAO notes that the applicant's spouse and one of her children are after-acquired equities.

<sup>2</sup> The AAO notes that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for accruing unlawful presence from April 1, 1997, the date on which unlawful presence provisions were enacted, and October 11, 2003, the date on which she departed the United States. The applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant has failed to file an Application for Waiver of Ground of Inadmissibility (Form I-601) in order to seek a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 1182(i).

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 director denied the application, stating that because the applicant was residing outside of the United States, she was required to file the Form I-212 and Form I-601 with the U.S. consulate overseas. The evidence in the file, however, does not show that the applicant is residing outside of the United States and we withdraw the director's comments to the contrary.

While the applicant is inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for attempting to enter the United States by fraud and seeking admission within ten years of her last departure after accruing more than one year of unlawful presence, and is required to file a Form I-601 in order to seek a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), the applicant is seeking adjustment of status and *may* file the Form I-601 and Form I-212 in conjunction with the Form I-485 with the field office having jurisdiction over her residence. *See 8 C.F.R. § 212.2(e)*. The AAO notes, however, that the applicant does not have a pending or approved immigrant petition

underlying the Form I-485. The field office director may also request that the applicant file a Form I-601, which must be adjudicated prior to adjudication of the Form I-212.

Since the applicant is *eligible* to apply for permission to reapply for admission to the United States and a waiver of grounds of inadmissibility in conjunction with the Form I-485 and the Form I-485 has not been terminated, the AAO withdraws the decision of the field office director to deny the applicant's Form I-212 on the basis that the applicant is required to file the Form I-601 and Form I-212 abroad. The matter shall be remanded to the field office director for a full adjudication of the applications on the merits.<sup>3</sup>

**ORDER:** The field office director's decision is withdrawn. The application is remanded to the field office director for entry of new decisions that, if adverse to the applicant, shall be certified to the AAO for review.

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<sup>3</sup> This decision has no bearing on whether the applicant has established extreme hardship to a qualifying relative or whether the applicant does or does not warrant a favorable exercise of discretion. The AAO's decision merely withdraws the director's stated basis for the denial of the application and directs the director to review the applicant's Form I-212 and supporting documentation to determine whether the applicant warrants a favorable exercise of discretion.