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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H4

[REDACTED]

Date: DEC 28 2011

Office: HARTFORD, CT

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

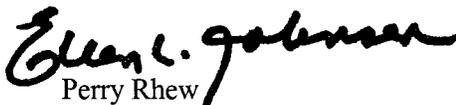
[REDACTED]

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, with a fee of \$630. 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 into the United States after Deportation or Removal (Form I-212) was denied by the Field Office Director, Hartford, Connecticut. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The record reflects the applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), as an alien who reentered the United States without being admitted after having been ordered removed. Specifically, the record shows, and the applicant concedes, that he "entered the United States at somewhere near San Ysidro, California sometime in October of 1986," and was apprehended by border patrol agents. *Affidavit of* [REDACTED], dated December 4, 2008. The record shows that an Order to Show Cause was issued, charging the applicant with entering the United States without inspection and placing the applicant in deportation proceedings. *Order to Show Cause (Form I-221S)*, dated October 14, 1986. The record further shows that on December 18, 1986, the applicant was ordered removed *in absentia* by an immigration judge. *Statement of the Case, Findings of Fact, Conclusions of Law, Decision and Order*, dated December 18, 1986. The field office director found, and the applicant does not contest, that he remained in the United States until his departure in March 1991, subsequently reentered the United States without inspection, and continues to reside in the United States. The applicant is the son of a lawful permanent resident and seeks permission to reenter the United States in order to reside with his mother.

The field office director found that there is no relief available to an applicant who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and denied the application accordingly. *Decision of the Field Office Director*, dated March 29, 2011.

On appeal, counsel contends that the applicant had requested that the interview for the Form I-485 and Form I-601 be postponed "to determine if this old warrant [for the applicant's deportation] should still exist." Counsel asserts that the scheduled interview was premature, requests that the appeal be granted, and requests that another interview be scheduled.

As an initial matter, the AAO notes that on the Notice of Appeal or Motion (Form I-290B), in Part 2, counsel purports to appeal the denial of the applicant's Form I-212, Form I-601, and Form I-485. However, the record shows that only one fee was paid for one appeal. For the following reasons, the AAO considers the applicant's appeal to be an appeal from the denial of the Form I-212.

The AAO does not have appellate jurisdiction over an appeal from the denial of a Form I-485, an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement.

With respect to an appeal from the Form I-601 and Form I-212, the record shows that the applicant is inadmissible under section 212(a)(9)(A) of the Act. Section 212(a)(9)(A) provides, in pertinent part:

(A) *Certain aliens 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 who seeks admission within 10 years of the date of such alien's departure or removal . . . 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 Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

In this case, the record contains a copy of the immigration judge's removal order. *Statement of the Case, Findings of Fact, Conclusions of Law, Decision and Order, supra.* Therefore, the record supports the finding that the applicant is inadmissible to the United States under section 212(a)(9)(A) of the Act and must obtain the consent of the Secretary of Homeland Security to reapply for admission, *i.e.*, by filing an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212).

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

....

(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.

The AAO notes that although the field office director found the applicant inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act as an alien who reentered the United States without being admitted after having been ordered removed, based on the record before the AAO, there is insufficient evidence the applicant is inadmissible under this section of the Act.

Section 212(a)(9)(C)(i)(II) of the Act applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997.

As it is unclear when and how the applicant reentered the United States after his 1991 departure the AAO cannot conclude that he is inadmissible under section 212 (a)(9)(C)(i)(II) of the Act. This is not to say that he is not inadmissible under that ground, just that the record as it currently exists does not support that finding.

Similarly, as the field office director noted in its decision denying the Form I-601, the applicant did not submit any statement explaining the acts that cause him to be inadmissible for misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). A review of the applicant's Form I-601 shows that in Part 10, for "Reason for Inadmissibility," the applicant stated only, "misrepresentation - INA 212(a)(6)(C)(i)." However, there is insufficient evidence in the record to support a finding that the applicant is inadmissible for misrepresentation of a material fact in order to gain an immigration benefit. This is not to say the applicant is not inadmissible under that ground. The Field Office Director should follow up on this and make a determination after further investigation of the applicant's statement.

Under these circumstances, because the only clear inadmissibility is for section 212(a)(9)(A) of the Act, the AAO will consider the applicant's appeal to be an appeal of the denial of the Form I-212.

After a careful review of the record, the AAO summarily dismisses the appeal. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

In this case, the applicant's appeal fails to specifically identify any erroneous conclusion of law or statement of fact in the field office director's decision. Rather, the appeal contends that the interview was premature and requests that another interview be scheduled. The AAO does not have jurisdiction to direct the field office to schedule interviews. In addition, the record contains clear evidence that the applicant was removed from the United States. Counsel's concern as to whether "this old warrant should still exist" is not within the jurisdiction of USCIS. Counsel did not otherwise identify specifically any erroneous conclusion of law or statement of fact. Accordingly, the appeal is summarily dismissed.

ORDER: The appeal is summarily dismissed.