

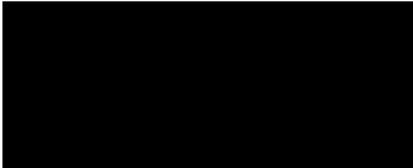
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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**U.S. Citizenship  
and Immigration  
Services**



HL4

Date: **DEC 30 2011** Office: VERMONT SERVICE CENTER FILE: 

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:



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,

*for* 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 Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Uganda and a citizen of the United Kingdom, who has a long history of entries and attempted entries into the United States. The applicant first entered the United States on October 3, 1989 with a B2 visitor's visa and an authorized period of stay until May 6, 1990. The applicant did not depart the United States, filing for asylum on April 18, 1992. The applicant's asylum application was denied and on April 23, 1996, the applicant was granted voluntary departure on or before October 23, 1996. The applicant then departed the United States on April 23, 1996. On August 8, 1996, at the U.S. Consulate in London, the applicant applied for and was refused a visitor's visa. On August 16, 1996, the applicant was admitted to the United States under the Visa Waiver Pilot Program with her U.K. passport. The applicant then went through a series of attempted entries to the United States, sometimes being refused admission and sometimes being admitted under the Visa Waiver Program. On August 10, 1997, the applicant was refused admission at the Washington Dulles Airport; on August 24, 1997, the applicant was admitted to the United States under the Visa Waiver Program; and on January 14, 1998, the applicant was refused entry at the Miami International Airport.

The record indicates that on May 28, 2003 at the Champlain, New York, Port of Entry, the applicant again sought admission under the Visa Waiver Program. During primary and secondary inspection it was discovered that the applicant had previously resided in the United States and had previously been refused admission. USCIS records show that the applicant was then placed in expedited removal proceedings and removed from the United States.

The record reflects that the applicant reentered the United States without a lawful admission or parole on or about July 22, 2003. The applicant was apprehended after this entry, her previous removal order was reinstated, and on or about September 4, 2003 she was removed to Canada. She now 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 enter the United States and reside with her U.S. citizen spouse and child.

In a decision, dated April 30, 2010, the director found the applicant inadmissible under section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for a period of one year or more and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by fraud or willful misrepresentation. In addition, the director determined that the applicant was inadmissible under section 212(a)(9)(C) of Act as an applicant who entered the United States illegally after previously being removed. The director found that the applicant is ineligible to apply for I-212 relief until ten years from the date of her subsequent departure in 2003 and denied the Form I-212 accordingly.

The proceedings in the present case are for permission to reapply for admission into the United States after deportation or removal, and, therefore, the AAO will not discuss the applicant's potential grounds of inadmissibility under section 212(a)(9)(B) or 212(a)(6)(C)(i) of the Act.

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.

....

(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.

....

(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 Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

- (A) removal;
- (B) departure from the United States;
- (C) reentry or reentries into the United States; or
- (D) attempted reentry into the United States.

In her brief, counsel cites to 8 C.F.R. § 217.4(a)(3), which states that a refusal of admission for aliens who apply for admission under the Visa Waiver Program does not constitute a removal for purposes of the Act. This section references 8 C.F.R. 217.4(a)(1), which provides, in pertinent part:

An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in Section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed.

The regulation does not reference any sections of the Act pertaining to expedited removal, and allows for a hearing before an immigration judge only where the alien applies for asylum. A review of the regulatory history supports counsel's argument that aliens who apply for admission under the Visa Waiver Program cannot be subject to expedited removal. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312-01, 10327 (March 6, 1997) (“[I]nadmissible VWPP applicants may be temporarily refused permission to enter the United States, but are not subject to the formal expedited removal provisions of section 235(b)(1) of the Act.”); *see also* Visa Waiver Pilot Program, Fed. Reg. 53 Fed. Reg. 24898-01 (June 30, 1988) (“[I]n recognition of the finality of the immigration officer's determination as to the alien's admissibility at the port of entry, the proposed rule has been changed to reflect that the action taken at the port of entry would be a refusal of admission. This procedure would permit the alien to apply for a visa and to reapply for admission without being barred . . .”).

However, the AAO has not appellate authority to alter removal orders entered pursuant to section 235(b)(1) of the Act, and the record shows that the applicant was removed pursuant to that section on May 28, 2003 as a nonimmigrant not in possession of a valid nonimmigrant visa or border crossing card (INA § 212(a)(7)(B)(i)(II)), and not merely refused admission pursuant to 8 C.F.R. § 217.4. The record also shows that the applicant entered the United States without inspection and the prior removal order was reinstated on July 22, 2003. Therefore, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). As it has not been ten years since the date of the applicant's last departure, she is ineligible to apply for permission to reapply for admission.



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The burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.