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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

[redacted]

#4

FILE: [redacted] Office: BUFFALO, NY Date: MAR 08 2011

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, 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 Field Office Director, Buffalo, New York, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The order dismissing the appeal will be affirmed.

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 November 6, 2009. The AAO dismissed the applicant's appeal because the applicant is inadmissible under the provisions of section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and is required to seek a waiver of this ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), by filing an Application for Waiver of Grounds of Inadmissibility (Form I-601) with the U.S. Consulate abroad. The AAO also found that the applicant does not have a qualifying family member in order to qualify for a waiver under section 212(i) of the Act, and she is, therefore, mandatorily inadmissible to the United States and no purpose would be served in the favorable exercise of discretion in adjudicating an application to reapply for admission into the United States. *Decision of AAO,* dated September 13, 2010.

In his motion to reconsider, counsel contends that the AAO acted *ultra vires*, beyond its legal authority, in finding that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. *See Motion for Reconsideration,* dated October 11, 2010. In support of his contentions, counsel submits only the referenced motion and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

8 C.F.R. § 103.5(a) provides, in pertinent part:

> (3) *Requirements for motion to reconsider.*
> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In his motion to reconsider, counsel contends that the AAO inexplicably and without authority found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, admitting that the finding was beyond the decision of the field office director. Counsel contends that the AAO compounded its *ultra vires* act by additionally "denying" a waiver of inadmissibility based on fraud, which was never filed by the applicant. *See Motion for Reconsideration.*

Counsel's contentions are unpersuasive. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO did not, as counsel claims, essentially deny a waiver of inadmissibility by finding that the applicant had failed to comply with regulatory requirements for filing the Form I-212. In its prior decision, the AAO noted the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act, found that she did not have a qualifying relative as described at section 212(i) of the Act, and noted that she was, therefore, mandatorily

inadmissible to the United States. As noted by the Board of Immigration Appeals (BIA) in *Matter of Martinez-Torres*, 10 I&N Dec. 776 (BIA 1964), no purpose is served in granting an application for permission to reapply for admission into the United States to an applicant who is mandatorily inadmissible to the United States. The AAO finds no error in its prior decision to note the applicant's inadmissibility under section section 212(a)(6)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(C)(i). Accordingly, the AAO's prior decision is affirmed.

ORDER: The order dismissing the appeal is affirmed. The application remains denied as a matter of discretion.