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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

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: MAR 15 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,

Jerry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, 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 a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen and reconsider will be dismissed.

The applicant is a native and citizen of Guyana who, on November 17, 1999, appeared at John F. Kennedy International Airport. The applicant presented a photo-substituted Guyanese passport and counterfeit Canadian Landed Immigrant paper. The applicant was placed into secondary inspection. The applicant failed to admit that the documentation he presented was fraudulent. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to enter the United States by fraud and for being an immigrant without valid documentation. On November 17, 1999, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

On March 13, 2005, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601), indicating that he resided in the United States. On March 25, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed on his behalf by his naturalized U.S. citizen spouse. The Form I-485 indicates that the applicant entered the United States without inspection on December 28, 1999. On March 14, 2006, the Form I-485 was denied. On May 31, 2006, the applicant filed the Form I-212, indicating that he continued to reside in the United States. On September 10, 2008, the Form I-601 was denied. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and 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 naturalized U.S. citizen spouse, one derivative U.S. citizen child and one U.S. citizen child.

The acting 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 September 10, 2008.

On appeal, counsel contended that the applicant had satisfied the burden of establishing the favorable factors in his case outweigh the negative factors. *See Counsel's Statement*, dated October 7, 2008. In support of his contentions, counsel submitted the referenced statement, copies of financial documentation and copies of documentation already in the record.

The AAO dismissed the applicant's appeal because in a separate proceeding, the acting director found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and ineligible for a waiver pursuant to section 212(i) of the Act. The AAO found that, because the applicant was ineligible for a waiver of inadmissibility under section 212(i) of the Act and had failed to file an appeal of that decision, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The AAO also found that the applicant 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 not eligible to apply for permission to reapply for admission

because he has not remained outside the United States for the required ten years. *Decision of AAO*, dated July 16, 2010.

In the motion to reopen and reconsider, counsel contends that there is no case law or federal statute which specifically requires a simultaneous or concurrent appeal of a Form I-212 and Form I-601. See *Brief in Support of Motion to Reconsider*, dated August 13, 2010. In support of his motion to reopen and reconsider, counsel submits the referenced brief and copies of documentation already filed. The entire record was reviewed in rendering a decision in this case.

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

(2) Requirements for motion to reopen.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. . . .

(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.

The applicant's motion must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4) because it does not meet the requirements of a motion to reopen or reconsider. Regarding the motion to reopen, counsel fails to provide new facts supporting by affidavits or documentary evidence which form the basis of a motion to reopen.

Regarding the motion to reconsider, counsel contends that: the AAO's conclusion that the applicant had only filed one timely appeal is flawed because the applicant timely filed an appeal of the Form I-212 and the appeal should have been considered and not summarily dismissed; there is no case law or federal statute which specifically requires a simultaneous or concurrent appeal of a Form I-212 and Form I-601; and there is no legal requirement that a Form I-212 and Form I-601 be filed simultaneously or that they need be appealed together.. Counsel's contentions are unpersuasive. The AAO did not find that an applicant is required to file the Form I-212 and Form I-601 simultaneously or that appeals must be taken simultaneously. The AAO simply found that no purpose would be served in the favorable adjudication of a Form I-212 where another ground of inadmissibility exists. As discussed in its prior, the AAO noted that in *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), the Board of Immigration Appeals (BIA) held that an application for permission to reapply for admission should be denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act because no purpose would be served in granting the application. Thus, there was no error in the AAO's prior decision.

Although the AAO found, beyond the director's decision, that the applicant was inadmissible under section 212(a)(9)(C)(i) of the Act, counsel has not addressed this issue on motion. The applicant is inadmissible under section 212(a)(9)(C)(i) of the Act may apply for permission to reapply for admission only from outside the United States and only after he has remained outside the United

States for a period of ten years. The record clearly establishes that the applicant is currently present in the United States and has never spent the required ten years outside of the United States prior to submitting his application for permission to reapply for admission. Accordingly, the applicant is ineligible to apply for permission to reapply for admission at this time, and the order dismissing the appeal is affirmed.

ORDER: The motion is dismissed. The order dismissing the appeal is affirmed.