

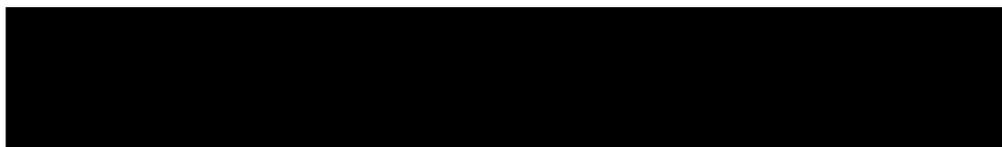
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H4

FILE: [redacted] Office: HOUSTON, TX 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)

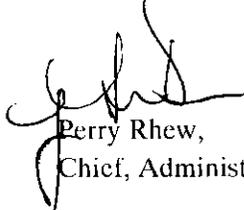
ON BEHALF OF APPLICANT:
[redacted]

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,


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 appeal will be dismissed.

The applicant is a native and citizen of El Salvador whose mother, on November 30, 1989, filed a Request for Asylum in the United States (Form I-589) on which the applicant was a dependent. On December 1, 1989, the applicant's Form I-589 was denied and the applicant was placed into immigration proceedings for entering the United States without inspection on November 25, 1989. On April 6, 1990, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States.

On January 12, 1996, the applicant filed an Application for Asylum and for Withholding of Deportation (Form I-589) indicating that he had entered the United States without inspection on October 15, 1989. On October 12, 2002, the applicant married his naturalized U.S. citizen spouse. On August 23, 2004, the applicant filed a motion to reopen immigration proceedings with the immigration judge. On November 1, 2004, the immigration judge denied the motion to reopen. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On April 15, 2005, the BIA dismissed the applicant's appeal. The applicant filed a petition for review with the Fifth Circuit Court of Appeals (Fifth Circuit). On August 4, 2006, the Fifth Circuit dismissed the applicant's petition for review. On September 18, 2007, the applicant's Form I-589 was administratively closed. On October 2, 2008, the applicant was removed from the United States and returned to El Salvador, where he claims he has since resided.

On November 21, 2008, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on June 10, 2009. On September 13, 2010, the applicant filed the Form I-212, indicating that he resided in El Salvador. 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). He 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 and one U.S. citizen stepchild and one U.S. citizen child.

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 his last departure after having accrued more than one year of unlawful presence in the United States. The field office director determined that the applicant was required to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) and a Form I-212 simultaneously with the U.S. Consulate abroad. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated November 4, 2010.

On appeal, the applicant contends that he was wrongfully removed from the United States because he has evidence that he was granted Temporary Protected States (TPS); he was not unlawfully present because he had been granted employment authorization throughout the years; he did not accrue unlawful presence because the consular officer carefully reviewed his documentation and concluded that he was granted permission to stay and work in the United States since 1990; and his family will

suffer hardship if he is not permitted to return to the United States.¹ See Form I-290B, dated November 10, 2010. In support of his contentions, the applicant submits the referenced Form I-290B and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

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

¹ The record reflects that the applicant was granted employment authorization under TPS from February 25, 1991 until August 25, 1991 and from September 21, 1991 until March 20, 1992. The applicant was subsequently granted employment authorization under Deferred Enforced Departure (DED) from July 1, 1993 until December 31, 1994. While the applicant was granted subsequent employment authorization cards, these were issued under the applicant's pending asylum application and not under DED or TPS. Moreover, a grant of employment authorization does not automatically confer lawful status in the United States. In order for an alien to be in lawful status under TPS an alien must file an Application for Temporary Protected Status (TPS) (Form I-821), which must be granted along with the application for employment authorization. The Form I-821 must be renewed and/or extended in order for an alien to remain in lawful status under TPS. The record reflects that the applicant has not filed and has not been granted TPS since 1992. Finally, there is no evidence in the record that the consular officer made a finding in regard to the applicant's inadmissibility under unlawful presence provisions. Furthermore, even if the consular office made such a finding, the record before the AAO reflects that the applicant has accrued unlawful presence.

territory, the [Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The record reflects that the applicant has remained outside the United States and lived in El Salvador since his removal.²

The applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing more than one year of unlawful presence in the United States, from April 1, 1997, the date on which unlawful presence provisions were enacted, until October 2, 2008, the date on which he was removed from the United States, and is seeking admission within ten years of his last departure.³ To seek a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601).

As required by 8 C.F.R. § 212.2(d), an immigrant visa applicant who is outside the United States and requires both a waiver and permission to reapply for admission must simultaneously file the Form I-601 and the Form I-212 with the U.S. Consulate having jurisdiction over the applicant's place of residence. As the applicant has not complied with the regulatory requirements for filing the Form I-212, the application in this matter was improperly filed. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

² The AAO notes that, if it is later found that the applicant illegally reentered the United States *at any time* after his 2008 departure, he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is ineligible for permission to reapply for admission until he has remained outside the United States for a period of ten years. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

³ The AAO finds that, while an application for asylum halts the accrual of unlawful presence during the period of time that it is pending and on appeal, in the applicant's case, since he engaged in unauthorized employment before and during the pendency of the application for asylum, the asylum application does not stop the accrual of unlawful presence. *See Section 212(a)(9)(B)(iii)(II)*. The record reflects that the applicant was employed in the United States from 1989 until 2008. The applicant was issued employment authorization valid from February 25, 1991 until August 25, 1991; September 21, 1991 until March 20, 1992; July 1, 1993 until December 31, 1994; June 30, 1997 until June 29, 1998; July 15, 1998 until July 15, 1999; August 14, 1999 until May 11, 2001; December 14, 2001 until December 14, 2002; June 4, 2003 until June 4, 2004; January 24, 2005 until January 23, 2006; June 6, 2006 until June 5, 2007; and September 27, 2007 until September 27, 2008. As such, the applicant engaged in unauthorized employment between 1989 and February 25, 1991; August 25, 1991 until September 21, 1991; March 20, 1992 until July 1, 1993; December 31, 1994 until June 30, 1997; June 29, 1998 until July 15, 1998; July 15, 1999 until August 14, 1999; May 12, 2001 until December 14, 2001; December 14, 2002 until June 4, 2003; June 4, 2004 until January 24, 2005; January 23, 2006 until June 6, 2006; and June 5, 2007 until September 27, 2007.