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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]

H4

Date: MAY 10 2011

Office: BOSTON, MA

FILE: [REDACTED]

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)

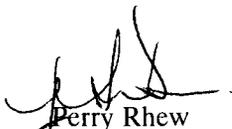
ON BEHALF OF APPLICANT:

[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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Boston, Massachusetts, 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 The field office director's decision will be withdrawn.

The applicant is a native and citizen of Guatemala who, on November 19, 1993, filed a Request for Asylum in the United States (Form I-589) indicating that he left Guatemala on January 10, 1991 and entered the United States without inspection on January 27, 1991. During an interview in regard to the Form I-589, the applicant testified that he entered the United States without inspection on January 27, 1991 and that he was present in Guatemala in June 1990.<sup>1</sup> On September 13, 2000, the Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings. On April 23, 2002, the immigration judge denied the applicant's applications for asylum and withholding of removal and granted the applicant voluntary departure until June 24, 2002. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On August 30, 2002, the BIA dismissed the applicant's appeal. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal.

On February 17, 2006, the applicant filed a motion to reopen with the BIA. On April 12, 2006, the BIA found that it did not have jurisdiction over the applicant's case and remanded it to the immigration court. On July 30, 2007, the applicant filed the Form I-212 indicating that he resided in the United States. The field office director found the applicant to be inadmissible under section 212(a)(9)(A)(ii) of 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii) in order to remain in the United States and reside permanently in the United States.

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 January 5, 2011.

On appeal, counsel contends that the applicant is eligible for relief pursuant to the Nicaraguan Adjustment and Central American Relief Act (NACARA) Pub. L. 105-100, 111 Stat. 2160, 2193. *See Counsel's Letter*, dated February 24, 2011. In support of her contentions, counsel submits the referenced letter, documentation purporting to establish the applicant's presence in the United States prior to 1991 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

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<sup>1</sup> The AAO notes that the applicant is currently claiming that he entered the United States on April 15, 1990 in order to qualify for relief pursuant to the Nicaraguan Adjustment and Central American Relief Act (NACARA) Pub. L. 105-100, 111 Stat. 2160, 2193.

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

The record in this matter establishes that the applicant failed to comply with voluntary departure and was, at the time of the field office director's decision, subject to an order of removal; however, since the issuance of that decision the immigration judge granted a motion to reopen immigration proceedings and the applicant is, therefore, no longer subject to an order of removal. Accordingly, the record does not establish that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A) of the Act.

The AAO therefore finds that the applicant is currently not required to apply for permission to reapply for admission to the United States because there is no evidence in the record that the applicant has ever been removed from the United States or departed the United States while an order of removal was outstanding. Since the applicant does not require permission to reapply for admission, the AAO withdraws the decision of the field office director to deny the applicant's Form I-212.

**ORDER:** The field office director's decision is withdrawn. The matter is remanded to the field office director for continued processing.