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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**



H4

DATE: APR 20 2012 OFFICE: VIENNA, AUSTRIA



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.

Thank you,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Vienna, Austria, 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 sustained.

The record reflects that the applicant is a native and citizen of Montenegro who was ordered removed from the United States by an immigration judge on May 20, 2002, and departed for Montenegro on August 6, 2008. 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). She 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 her U.S. Citizen mother.

The Field Office Director concluded that the applicant was inadmissible under section 208(d)(6) of the Act for filing a frivolous asylum application, failed to qualify for a waiver of inadmissibility of section 212(a)(9)(B)(i)(II) of the Act, and denied the application accordingly. *See Decision of Field Office Director* dated January 8, 2010.

On appeal former counsel for the applicant contends that the applicant is not subject to the provisions of section 208(d)(6) of the Act as an immigration judge has not make a specific finding that she has knowingly filed a frivolous asylum application. Former counsel also contends that the applicant merits a favorable exercise of discretion.

The record includes, but is not limited to, documentation of removal proceedings, letters from family, friends, community members, and employers, financial records, medical records, articles on medical care and other country conditions in Montenegro, articles on dementia and Alzheimer's disease, evidence of birth, residence, and citizenship, other applications and petitions filed on behalf of the applicant, psychological evaluations, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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 territory, the Secretary has consented to the alien's reapplying for admission.

On May 20, 2002 an immigration judge ordered the applicant removed from the United States. This decision was affirmed by the Board of Immigration Appeals. The applicant left the United States on August 6, 2008. As such, she is inadmissible under section 212(a)(9)(A) of the Act and must request permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.<sup>1</sup>

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.

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<sup>1</sup> In that same decision the AAO explained in detail why the applicant is not subject to section 208(d)(6) of the Act for filing a frivolous asylum application.