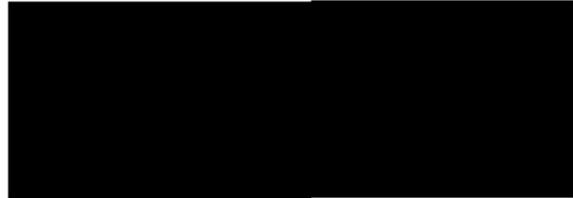


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



Hy



DATE: **AUG 01 2012** Office: SAN FRANCISCO, CA

FILE:

IN RE: Applicant:

APPLICATION: Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under Section 212(a)(9)(A) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California, 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 record reflects that the applicant is a native and citizen of Guatemala who was removed from the United States on or about March 1, 2011. The applicant was found to be inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I). The applicant does not contest this finding of inadmissibility. 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.

The field office director determined that the applicant's adverse factors outweighed his favorable factors; and he denied the Form I-212 accordingly. *Field Office Director's Decision*, dated April 12, 2012.

On appeal, counsel asserts that the field office director failed to adequately weigh the applicant's equities and gave undue weight to his adverse factors. *Brief in Support of Appeal*, dated June 11, 2012.

The record includes, but is not limited to, counsel's brief, letters of support, tax returns and immigration documents. The entire record was reviewed and considered in arriving at 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.

The record reflects that the applicant entered the United States without inspection on July 4, 1990; he filed Form I-589, Application for Asylum and Withholding of Removal, on September 16, 1993; his asylum case was denied and the immigration judge granted voluntary departure until December 31, 2007; he filed an appeal with the Board of Immigration Appeals (BIA) on November 19, 2007; the BIA dismissed his appeal on July 8, 2008 and granted him voluntary departure until September 6, 2008; he filed a petition for review with the Court of Appeals for the Ninth Circuit on August 5, 2008 without a request for a stay of removal; he became subject to a final removal order on September 7, 2008; he was granted a stay of removal on September 16, 2008 by the Court of Appeals for the Ninth Circuit; his stay of removal was reinstated on December 9, 2009; his petition for review was denied on November 24, 2010; and he was removed from the United States on February 8, 2011. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

....

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

- (iii) Exceptions.-

....

- (II) Asylees.-No period of time in which an alien has

a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

....

- (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant was employed in the United States from 1998 until 2009. However, he did not receive employment authorization until February 4, 2002. As such, his pending asylum case did not prevent the accrual of unlawful presence. The applicant accrued unlawful presence from April 1, 1997, the effective date of unlawful presence provisions under the Act, until September 16, 2008, the day he was granted a stay of removal. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present for a period of one year or more and seeking readmission within ten years of his February 8, 2011 departure from the United States. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The applicant may seek a waiver of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act by filing a Form I-601, Application for Waiver of Grounds of Inadmissibility. However, the record does not show that the applicant has filed a Form I-601 application. In addition, the record is not clear as to whether the applicant has a qualifying relative needed to meet the requirements for a waiver under section 212(a)(9)(B)(v) of the Act.

As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and he has not received a waiver under section 212(a)(9)(B)(v) of the Act, no purpose would be served in addressing the merits of his Form I-212 application, as he will remain inadmissible. As such, the appeal will be dismissed.

ORDER: The appeal is dismissed.