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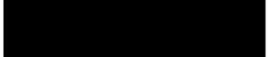
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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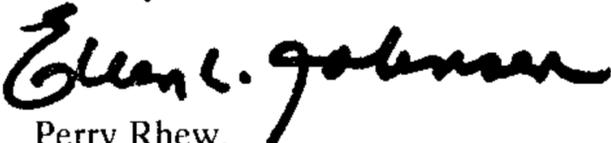
APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal pursuant to section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Vienna, Austria, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and the matter is now on appeal with the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of Kosovo who was ordered removed from the United States and was found to be inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act). The applicant seeks permission to reapply for admission into the United States (Form I-212) under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant's application for a waiver of inadmissibility (Form I-601) of those sections of the Act is the subject of a separate appeal, which has been dismissed.

In a decision dated May 27, 2010, the Field Office Director concluded that no purpose would be served in approving the application for permission to reapply due to the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act and the application was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the applicant submitted substantial evidence showing that the positive equities in his case outweigh the negative equities, and as a result, his permission to reapply for admission should have been approved.

In support of the waiver application, the record includes, but is not limited to legal arguments by the applicant's counsel, letters from the applicant's spouse, a letter from the applicant, letters of support from family and friends, psychological reports concerning the applicant's spouse, medical information for the applicant's spouse, employment and financial information for the applicant's spouse, biographical information for the applicant and his spouse, country conditions information for Kosovo, photographs of the applicant and his spouse, documentation of the applicant's spouse's travel to Kosovo, and documentation regarding the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found inadmissible under section 212(a)(9)(A)(ii) of the Act. Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

...  
(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 applicant states that he entered the United States without inspection on or about February 19, 2002. He applied for asylum on March 24, 2003. His application was referred to the Immigration Judge where it was denied and the applicant was ordered removed on December 28, 2004. The applicant's appeal to the Board of Immigration Appeals was dismissed on May 8, 2006 and the applicant's removal order became final. A subsequent motion to reopen and request for stay of removal were also dismissed. The applicant failed to depart the United States and was removed on January 17, 2007. The applicant's removal order renders him inadmissible for a period of ten years from the date of his removal in accordance with section 212(a)(9)(A)(ii) of the Act.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's application for a waiver of inadmissibility of that section of the Act was dismissed, therefore, 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. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the Field Office Director.

**ORDER:** The appeal is dismissed.