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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: **AUG 28 2012** Office: VIENNA, AUSTRIA

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)(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 in accordance with the instructions on 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 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 Macedonia who was removed from the United States pursuant to an order of removal on April 26, 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). 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 U.S. Citizen spouse and children.

The Field Office Director determined that because the applicant did not qualify for a waiver of inadmissibility under section 212(a)(9)(B)(i)(v) of the Act, the Form I-212 was denied as a matter of discretion because granting the permission would serve no purpose. See *Field Office Director's Decision*, dated July 22, 2010.

On appeal counsel requests that once the I-601 waiver application is granted, the I-212 application be remanded to the Field Office Director for an evaluation of whether the applicant merits a favorable exercise of discretion.

The record includes, but is not limited to, financial and medical documents, evidence of removal and criminal proceedings, documentation of birth, marriage, residence, and citizenship, statements from the applicant and his spouse, letters from family, friends, and members of the community, psychological evaluations, other applications and petitions filed on behalf of the applicant, 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) 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.

- (ii) 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 December 13, 1997. The applicant was issued a Notice to Appear in removal proceedings under section 240 of the Act on December 15, 1997. He filed a Form I-589, Application for Asylum and for Withholding of Removal, on March 31, 1998. The immigration judge denied his applications for asylum and withholding of removal, granting him voluntary departure on September 14, 1998. The applicant failed to post his voluntary departure bond within the time allotted. A subsequent appeal was dismissed by the Board of Immigration Appeals (BIA) on June 21, 2002, and the applicant was granted an additional 30 days to depart the United States. The applicant then filed a Petition for Review on July 1, 2002 with the Ninth Circuit Court of Appeals, which was denied on December 8, 2003. The applicant departed the United States on April 26, 2008. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act for a period of 10 years from the date of his last departure and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The Field Office Director found the applicant was also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and that he had not demonstrated he qualified for a waiver of that inadmissibility. *Field Office Director's Decision*, dated July 22, 2010. The AAO affirmed this finding, noting that it is unclear whether the applicant is also inadmissible under section 212(a)(2)(A) of the Act for having been convicted of a crime involving moral turpitude, or whether he has by fraud or willful misrepresentation attempted to procure a visa to the United States under section 212(a)(6)(C) 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. As the applicant remains inadmissible under section 212(a)(9)(B)(i)(II) of the Act no purpose would be served in granting the applicant's Form I-212.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.