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

[REDACTED]

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DATE: **FEB 13 2012** OFFICE: NEW YORK, NEW YORK

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 District Director, New York, New York, 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 remanded to the District Director for further action.

The record reflects that the applicant is a native and citizen of Jamaica who was expeditiously removed from the United States on January 26, 1999 for a period of five (5) years, after attempting to enter the U.S. using a counterfeit Canadian immigration document. On May 2, 2003, the applicant was admitted to the U.S. as a B-2 nonimmigrant visitor, and has resided in the U.S. since that date.

The District Director determined that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), as an alien who had been ordered removed under section 235(b)(1) and who reentered the United States without being admitted. See *Decision of the District Director*, dated June 24, 2009. The District Director found the applicant ineligible to obtain consent to reapply for admission to the United States and denied the Form I-212 accordingly.

The AAO finds that the District Director erred in determining that the applicant is inadmissible under 212(a)(9)(C) of the Act.

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

....
(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible. (*Emphasis added*).

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

As noted above, the record reflects that the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act on January 26, 1999. The record further reflects that the applicant was inspected and admitted as a non-immigrant visitor at Port Everglades, Florida on May 2, 2003, issued Form I-94 and authorized to remain in the United States until November 1, 2003. As the applicant did not enter or attempt to reenter the United States without being admitted, he is not not inadmissible under Section 212(a)(9)(C).

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.

...

- (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 Attorney General has consented to the alien's reapplying for admission.

The AAO finds that the applicant is inadmissible under Section 212(a)(9)(A)(i). The AAO further finds that the applicant is eligible to seek an exception to his inadmissibility pursuant to section 212(a)(9)(A)(iii) of the Act.

Since the applicant is eligible to apply for permission to reapply for admission to the United States, the AAO withdraws the decision of the District Director to deny the applicant's Form I-212 on the basis that the applicant is ineligible for relief under section 212(a)(9)(C) of the Act. The matter shall be remanded to the District Director for a full adjudication of the application on the merits.¹

¹ The AAO notes that the record reflects that the applicant is also inadmissible under section 212(a)(6)(C) of the Act for seeking to procure admission to the United States by fraud or willfully misrepresenting a material fact. As such, the applicant must seek a waiver of inadmissibility pursuant to section 212(i) of the Act by filing Form I-601, Application for Waiver of Grounds of Inadmissibility. The AAO further notes that, in situations where an applicant must file both a Form I-212 and a Form I-601, the Adjudicator's Field Manual clearly

ORDER: The appeal is remanded to the Field Office Director for further action as noted in this decision.

states that the Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual states: "If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose."