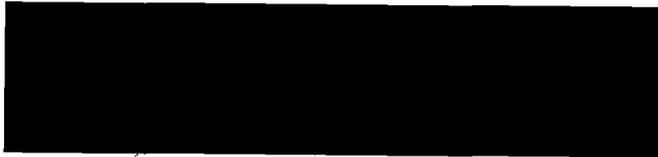


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



H4

Date: JAN 10 2012

Office: HOUSTON, TX

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:

SELF-REPRESENTED

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 Field Office Director, Houston, Texas, 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 Nicaragua who attempted to enter the United States on a temporary visa as an intending immigrant. She was found inadmissible pursuant to section 212(a)(7)(A) and was removed pursuant to section 235(b)(1) of the Act. 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 husband.

The Field Office Director determined that the applicant had failed to file a Form I-601, Application for Waiver of Grounds of Inadmissibility, in conjunction with her Form I-212 and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated March 2, 2011.

On appeal, the applicant's spouse asserts that he will suffer hardship as a result of separation from the applicant. He further asserts that, after the Form I-212 was denied, the applicant tried on three separate occasions to file a Form I-601 and that it was rejected by the consulate in Managua, Nicaragua. *Form I-290B*, Notice of Appeal or Motion, received April 4, 2011.

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 attempted to enter the United States on December 31, 2008. During a secondary inspection she admitted that she was intending to get married and resume the residence she had established on two separate stays in the United States. The applicant was found inadmissible pursuant to 212(a)(7)(A) and removed pursuant to section 235(b)(1) of the Act. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The record reflects that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for misrepresentation. She attempted to enter the United States on a temporary visa in order to get married and establish a residence. This involves misrepresentation as her intent was to remain in the United States rather than remain temporarily as required by her tourist visa. This misuse of her visa renders her inadmissible under section 212(a)(6)(C)(i) of the Act and requires a waiver under Section 212(i) of the Act.

If an applicant also requires a waiver under section 212(g), (h) or (i) of the Act, Form I-601, Application for Waiver of Grounds of Excludability, must be filed simultaneously with the Form I-212. 8 C.F.R. § 212.2(d). In this case the Form I-601 was not filed simultaneously with the Form I-212. Thus, no purpose would be served in adjudicating this application. With regard to the applicant's claim that the embassy refused to let her file a Form I-601, it appears that the embassy was not aware of her inadmissibility for misrepresentation and the need for a waiver. This should be explained to the embassy staff so that the applicant can file a Form I-601.

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 does not have a pending Form I-601 and as such adjudicating her Form I-212 would serve no purpose. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.