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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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Date: **JAN 17 2012**

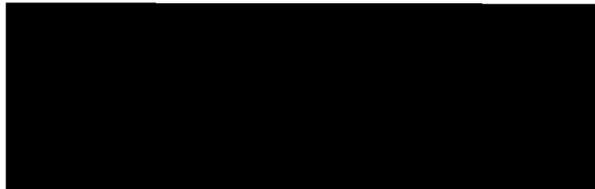
Office: HELENA

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.

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 application for permission to reapply for admission after removal was denied by the Field Office Director, Helena, Montana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of Canada who was expeditiously removed in September 2010 as a result of failing to have a valid immigrant visa to enter the United States. *Notice to Alien Ordered Removed/Departure Verification*, dated September 22, 2010. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). She now 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 spouse.

The Field Office Director determined that the applicant had failed to establish that the favorable factors in her application outweighed the unfavorable factors in her application. The applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) was denied accordingly. *See Field Office Director's Decision*, dated March 29, 2011

On appeal, counsel for the applicant submits a brief, dated April 20, 2011, and referenced exhibits. In addition, on June 6, 2011, the AAO received supplemental documentation in support of the I-212 appeal, including medical records pertaining to the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Electronic USCIS records indicate that on or around November 30, 2011, the Form I-130, Petition for Alien Relative (Form I-130), filed by the applicant's U.S. citizen spouse in November 2010 on her behalf was denied. The ability of the applicant to apply for an immigrant visa and admission to the United States as an immigrant would be based on an approved Form I-130. In the absence of an approved Form I-130, no application for admission is currently possible, and no purpose would be



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served in considering her application for permission to reapply for admission at this time. Accordingly, the appeal of the field office director's denial of the Form I-212 is dismissed as a matter of discretion.

ORDER: The appeal is dismissed.