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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**



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Date: **JAN 19 2012**

Office: SAN FRANCISCO

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 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, San Francisco, California, 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 the Philippines who was found inadmissible for having been deported from the United States on November 19, 2008. The applicant was found 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 wife and children.

In addition, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or misrepresentation. As such, the applicant requires a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).<sup>1</sup>

The field office director determined that an approval of the Form I-212 was not warranted as a matter of discretion, and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated May 3, 2011.

On appeal, the applicant's counsel contends that the applicant's family, including his wife, four children, and grandchildren, all live in the United States. Further, the applicant's attorney asserts that the applicant's spouse is suffering emotional, psychological and financial hardships due to her separation from the applicant. The applicant's attorney also asserts that the positive equities in the applicant's case outweigh his immigration violations.

The record contains a brief written on behalf of the applicant, a statement of the case written on behalf of the applicant, declarations from the applicant and his spouse, a copy of the applicant's spouse's permanent resident card, letters from two of the applicant's children, a copy of a naturalization certificate for one child and a copy of a permanent resident card for another, a psychosocial assessment of the applicant's wife, medical records for the applicant's wife, financial documentation, letters from the employers of the applicant's spouse, letters from the applicant's previous employer and photographs.

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

(A) Certain aliens previously removed.-

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<sup>1</sup> The applicant may also be inadmissible to the United States under section 212(a)(6)(B) under the Act for failing to attend the proceeding to determine his deportability. This ground of inadmissibility was not raised prior to the instant decision, and as such, it is not clear whether the applicant had reasonable cause for his failure to attend the removal proceeding.

- (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 was admitted to the United States on November 4, 1989 as a P2-2 Immigrant (an unmarried son of a lawful permanent resident). Thereafter, the applicant applied for naturalization and admitted that he misrepresented his marital status in order to obtain admission into the United States. As a result of his misrepresentation, removal proceedings were initiated, the applicant was ordered removed in absentia on January 4, 2000, and he was later apprehended and deported on September 12, 2008. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act for having been previously deported, and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) 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 is inadmissible under section 212(a)(6)(C)(i) of the Act, 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.<sup>2</sup> As the applicant is statutorily inadmissible to the United States under another section of the Act, no purpose would be served in granting the application for permission to reapply for admission at this time. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> As the applicant is inadmissible under section 212(a)(6)(C)(i), he is required to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) at the consulate when he applies for an immigrant visa.