

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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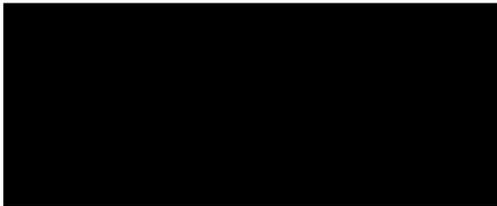
Date: JUL 19 2012 Office: PHOENIX, AZ

FILE:

IN RE:

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

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.

Thank you,

f. Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Phoenix, Arizona, 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 applicant is a native and citizen of the United Kingdom who was determined to be inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been removed from the United States on August 29, 2002 under section 235(b) of the Act, 8 U.S.C. §1225(b), and, thereafter, reentering the United States without being admitted or paroled. He seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), in order to remain in the United States with his U.S. citizen spouse and stepchildren.

The Field Office Director determined that the applicant was not eligible for a section 212(a)(9)(C)(ii) exception as he had not resided outside the United States for ten years from the date of his departure and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated April 9, 2012.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act as he did not enter the United States without inspection, but was admitted by a U.S. immigration officer at the Lukeville, Arizona Port-of-Entry. *Notice of Appeal or Motion* (Form I-290B), dated April 18, 201; *see also Counsel's Brief*.

The record contains, but is not limited to, statements from the applicant and his spouse; medical records for the applicant's oldest stepdaughter and stepson; tax returns and W-2 Wage and Tax Statements for the applicant and his spouse; earnings statements for the applicant's spouse; an Individualized Education Program evaluation relating to the applicant's stepson; and statements of support from two of the applicant's friends. The entire record was reviewed and all relevant evidence considered in reach a decision on the appeal.

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

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

(i) In general.-Any alien who-

....

(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.

(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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

On appeal, counsel contends that the applicant is not subject to section 212(a)(9)(C)(i)(II) of the Act, as he did not return to the United States without inspection. He asserts that the applicant's return to the United States occurred on September 9, 2002 through the Lukeville, Arizona Port-of-Entry following his inspection by a U.S. immigration officer. In an August 22, 2011 affidavit, the applicant also states that he was admitted to the United States on September 9, 2002. He maintains that he was asked by a U.S. immigration inspector for identification, that he showed the inspector his Arizona driver's license and that the inspector then admitted him to the United States without further questioning.

The AAO will not, however, consider the applicant's inadmissibility pursuant to section 212(a)(9)(C)(i)(II) of the Act as the record reflects that a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) reinstating the applicant's 2002 removal order was served on the applicant by U.S. Immigration and Customs Enforcement on March 28, 2011. Although we note that counsel on appeal questions whether the Form I-871 has been lawfully issued, the reinstatement of removal orders lies outside the jurisdiction of United States Citizenship and Immigration Services, and the AAO will not, therefore, address counsel's assertions in this regard.

Section 241(a)(5), 8 U.S.C. § 8 U.S.C. § 1231(a)(5), states:

If the Attorney General [now Secretary of Homeland Security] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after reentry.

In that the applicant is subject to section 241(a)(5) of the Act and ineligible for any relief, the AAO finds no purpose would be served by considering his application for permission to reapply for admission.

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

ORDER: The appeal is dismissed.