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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

PUBLIC COPY



U.S. Citizenship
and Immigration
Services



HL4

Date: **MAR 30 2012**

Office: NEWARK, NJ

FILE: 

IN RE: 

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:

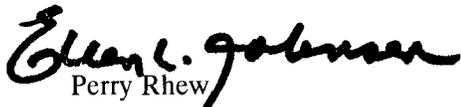


INSTRUCTIONS:

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, Newark, New Jersey, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and the matter is now on appeal with the Administrative Appeals Office (AAO). The appeal will be dismissed as moot.

The applicant is a native and citizen of Bangladesh who was found to be inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(9)(A)(i) due to the removal order entered in his case by the Immigration Judge in Elizabeth, New Jersey pursuant to INA § 235(b)(1), 8 U.S.C. § 1225(b)(1), on May 24, 2006. The applicant was also found to be inadmissible under INA § 212(a)(9)(B)(i)(II), 8 U.S.C. 1182(a)(9)(B)(i)(II), due his having accrued one year or more of unlawful presence in the United States. The applicant's inadmissibility for unlawful presence is not the subject of this appeal. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen spouse. Although the Field Office Director raises questions regarding the validity of the applicant's marriage for immigration purposes, the Form I-130 is also not the subject of this appeal and the validity of the applicant's marriage for immigration purposes will not be addressed herein. The applicant 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).

On August 23, 2010, the Field Office Director determined that the applicant failed to establish that a favorable exercise of the Secretary's discretion was warranted and denied the Form I-212 accordingly.

On appeal, counsel for the applicant states that the Field Office Director erred in denying the Form I-212.

In support of the application, the record includes, but is not limited to, a brief by counsel for the applicant, biographical information for the applicant and his spouse, biographical information for the applicant's children, documentation of the applicant's and his spouse's marital history, a psychosocial family assessment, an affidavit from the applicant's spouse, a letter from the applicant, medical records for the applicant's child, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found inadmissible under INA § 212(a)(9)(A)(i). 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 [Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The record reflects that the applicant was ordered removed on May 24, 2006 by the Immigration Judge in Elizabeth, New Jersey pursuant to INA § 235(b)(1) as an arriving alien. As a result, the applicant was inadmissible under INA § 212(a)(9)(A)(i) for a period of five years from the date of his departure or removal from the United States. The applicant departed the United States on July 9, 2006 and therefore, as of July 9, 2011, is no longer inadmissible to the United States under INA § 212(a)(9)(A)(i). The AAO notes that the record indicates that the applicant remains inadmissible under INA § 212(a)(9)(B)(i)(II) due to his having accrued one year or more of unlawful presence in the United States between his entry without inspection in 1999 and his initial departure from the United States on March 11, 2006. The applicant will require a waiver of inadmissibility under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), in addition to resolving any questions regarding the validity of his marriage for immigration purposes. Those issues, however, are not before the AAO on the instant appeal.

The AAO finds that the applicant is not inadmissible under section 212(a)(9)(C)(i) of the Act and therefore, the Form I-212 is moot. Having found that the applicant does not need permission to reapply for admission, no purpose would be served in discussing whether he merits a favorable exercise of discretion. Accordingly, the appeal will be dismissed and the Form I-212 is moot.

ORDER: The appeal is dismissed as moot.