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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

[REDACTED]

Hty

Date: **MAR 30 2012** Office: SAN FRANCISCO, CA

FILE: [REDACTED]

IN RE: APPLICANT: [REDACTED]

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:

[REDACTED]

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 India who was ordered removed *in absentia* from the United States on March 20, 2003. 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). 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 U.S. Citizen daughter.

The Field Office Director determined the applicant failed to provide credible evidence to support his claim that he departed the United States on November 13, 2001 and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated July 8, 2011.

On appeal the applicant contends that USCIS New Delhi has examined the applicant's passport, found the November 13, 2001 passport stamp to be valid, and was going to contact the Field Office Director in San Francisco, California as well as counsel for the applicant. Counsel asserts that the applicant is therefore no longer inadmissible under section 212(a)(9)(A) of the Act, and does not require a Form I-212 waiver. No new evidence on the November 13, 2001 passport stamp was submitted on appeal.

The record contains copies of passport pages, documentation of removal proceedings, other applications and petitions filed on behalf of the applicant, a psychological evaluation, evidence of birth, marriage, residence, and citizenship, and statements from the applicant's family. The entire record was reviewed and considered in rendering a decision on the appeal.

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 on June 20, 1996 the applicant was admitted to the United States pursuant to a nonimmigrant visa. He filed a Form I-589, Application for Asylum, on August 29, 1996, and then departed the United States. On September 15, 1996 the applicant re-entered the United States using his nonimmigrant visa. The applicant was placed in removal proceedings, and on March 20, 2003 an immigration judge ordered him removed from the United States *in absentia*. The Form I-294, Warning to Alien Ordered Removed or Deported, indicates that the applicant is prohibited from entering, attempting to enter, or being in the United States for a period of 10 years from the date of his departure from the United States. *Form I-294*, April 15, 2003. Motions to reopen removal proceedings were denied.

The applicant contends he departed the United States on November 13, 2001, and because 10 years have elapsed since that departure he does not require permission to reapply for admission into the United States. However, in response to a request for evidence, the applicant was unable to present an original American Embassy letter of verification certifying the date of his last departure from the United States as well as documentation of travel on or about November 13, 2001. The applicant submitted a copy of some passport pages; however, the applicant failed to establish that the passport page containing an entry stamp for November 13, 2001 belongs to the applicant and is a valid entry stamp. It is again noted that although another passport page with entry / exit stamps shows the applicant's passport number, the passport page with the November 13, 2001 stamp does not. Moreover, the applicant's statement on appeal, that USCIS in New Delhi, India has verified that the November 13, 2001 entry stamp is valid, and will inform USCIS in San Francisco, California of this for adjudication of the Form I-212 waiver is not supported by USCIS records.

The AAO finds that the applicant has not provided credible evidence to show he departed the United States on or about November 13, 2001, or on any other date. Consequently he has failed to

demonstrate that he has remained outside the United States for the requisite 10 years and is no longer inadmissible under section 212(a)(9)(A)(ii) of the Act. 8 C.F.R. §212.2. The applicant does not assert on appeal that he is otherwise admissible in light of the evidence on his departure or that he qualifies for a waiver of inadmissibility pursuant to section 212(a)(9)(A)(iii) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that the applicant is not inadmissible under section 212(a)(9)(A) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.