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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: **MAY 15 2012** OFFICE: VIENNA, AUSTRIA 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Vienna, Austria, 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 the underlying application is unnecessary.

The applicant is a native and citizen [REDACTED] who was ordered removed from the United States and was found to be inadmissible under Immigration and Nationality Act (INA or the Act) § 212(a)(9)(A)(ii). The applicant seeks permission to reapply for admission into the United States (Form I-212) under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The applicant was also found to be inadmissible to the United States pursuant to INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), due to her attempted use of a Macedonian passport and U.S. visa in the name of another individual to gain admission to the United States. The applicant's application for a waiver of inadmissibility (Form I-601) is the subject of a separate appeal.

In a decision [REDACTED] the Field Office Director concluded that no purpose would be served in approving the application for permission to reapply due to the applicant's inadmissibility under INA § 212(a)(6)(C)(i) and the application was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the applicant submitted substantial evidence showing that the refusal of her admission would result in extreme hardship to her U.S. citizen parents and, as a result, her application for permission to reapply for admission should have been approved.

In support of the application, the record includes, but is not limited to a brief by the applicant's counsel, biographical information for the applicant and her parents, a psychological evaluation of the applicant's parents, medical documentation for the applicant's parents, employment documentation for the applicant's parents, photographs of the applicant and her family, and documentation regarding 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)(ii). 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 the applicant, an arriving alien in removal proceedings, was ordered removed by the Immigration Judge in Miami, Florida [REDACTED] and that decision became final upon the dismissal of the applicant's appeal to the Eleventh Circuit Court of Appeals [REDACTED]. The record reflects that the applicant departed the United States [REDACTED]. Because the applicant's removal proceedings were initiated upon her arrival in the United States, she was an arriving alien in removal proceedings. As a result, the applicant's removal order rendered her inadmissible for a period of five years from the date of her departure or removal from the United States in accordance with INA § 212(a)(9)(A)(i). The applicant departed the United States [REDACTED]. As five years have passed since the date of her departure, she is no longer inadmissible under INA § 212(a)(9)(A)(i). The applicant no longer requires permission to reapply for admission under INA § 212(a)(9)(A)(iii) and the appeal will be dismissed. The applicant, however, remains inadmissible under INA § 212(a)(6)(C)(i).

ORDER: The appeal is dismissed.