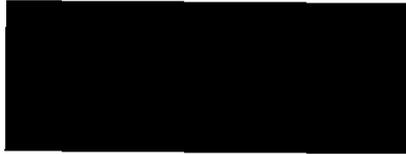


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services



H4

DATE: NOV 05 2012 OFFICE: VIENNA, AUSTRIA

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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 in accordance with the instructions on 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as no purpose would be served in granting the applicant's application for permission to reapply for admission into the United States.

The record reflects that the applicant is a native of the Socialist Federal Republic of Yugoslavia and citizen of Montenegro who was found to be inadmissible to the United States 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), for having been ordered removed from the United States and seeking admission within the proscribed period since the date of removal.¹ The applicant, through counsel, does not contest this finding of inadmissibility. Rather, 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 with his parents, wife, and daughter² in the United States.

Section 212(a)(9) of the Act provides, in relevant part:

(A) Certain aliens previously removed.-

...

(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

...

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

¹ The AAO notes that, in her decision, the Field Office Director states that the Consular Officer found the applicant inadmissible under section 212(a)(9)(A)(ii) of the Act, but she does not analyze whether the applicant is in fact inadmissible under the provisions of section 212(a)(9)(A)(ii).

² The AAO notes that at the time of the applicant's appeal, the record reflects that the applicant's spouse had a fetus *in utero* with a due date of March 1, 2011. See *Medical Letter Issued by* [REDACTED], facsimile dated August 12, 2010.

States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

The record reflects that the applicant attempted to procure admission to the United States on April 26, 2000, under the Visa Waiver program by presenting a photo-substituted [REDACTED] passport that did not belong to him. During secondary inspection by U.S. immigration officials, the applicant asserted a claim for asylum and was placed in removal proceedings. The applicant was paroled into the United States on June 27, 2000, pursuant to his pending asylum application. On June 21, 2001, the Immigration Judge issued an order, denying the applicant's applications for asylum and for withholding of removal as well as his request for relief under the Convention Against Torture. The record further reflects that the applicant reserved an appeal with the Board of Immigration Appeals (BIA), but did not file an appeal. On July 16, 2004, U.S. immigration officials apprehended the applicant and removed him to Montenegro on August 12, 2004. The applicant has remained outside the United States to date, and the U.S. Citizenship and Immigration Services (USCIS) received his Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) on June 21, 2010. Thereby, the AAO finds that the applicant is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act 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 sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act and no waiver has been approved, no purpose would be served in granting the applicant's Form I-212.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish that he is eligible for the benefit being sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.