



U.S. Citizenship
and Immigration
Services

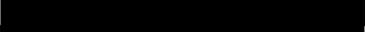


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Date: **OCT 10 2012**

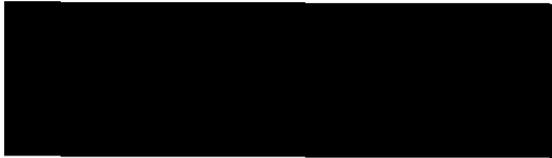
Office: LIMA, PERU

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) 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 application for permission to reapply for admission after removal was denied by the Field Office Director, Lima, Peru and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who was ordered removed from the United States on September 1, 2006 pursuant to sections 237(a)(1)(B), (a)(1)(C)(i), (a)(3)(D), and (a)(2)(A)(i) of the Act. The applicant was removed from the United States on October 16, 2006.

The applicant was found 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 is seeking 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 spouse.

In her decision, dated April 25, 2011, the field office director found that the applicant had failed to establish extreme hardship to his qualifying relative as a result of his inadmissibility and thus no purpose would be served in granting the applicant's permission to reapply for admission. She also found that the applicant had significant negative factors present in his case.

On appeal, counsel states that the field office director erred in her conclusion, that the applicant's spouse is and will continue to experience extreme hardship as a result of the applicant's inadmissibility, and his waiver application should be approved. Counsel submits additional evidence on appeal.

On September 23, 2003, February 18, 2004, and June 22, 2004 the applicant claimed to be a U.S. citizen on an I-9 Form, Employment Eligibility Verification Form, for the purposes of obtaining employment. The record indicates that on September 1, 2006 the applicant was removed from the United States pursuant to sections 237(a)(1)(B), (a)(1)(C)(i), (a)(3)(D), and (a)(2)(A)(i) of the Act. Section 237(a)(3)(D) of the Act states that an applicant who falsely represents himself to be a U.S. citizen for any purpose or benefit under this Act or a Federal or State law is subject to removal.

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.

Applicants making false claims to U.S. citizenship on or after September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, are inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and are ineligible for waiver consideration. No waiver is available for a violation of section 212(a)(6)(C)(ii)(I) and the record fails to demonstrate that the applicant qualifies for the exception described in section 212(a)(6)(C)(ii)(II). As the applicant's inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act statutorily bars her admission to the United States, the AAO finds no purpose would be served in considering whether she might be able to establish eligibility for permission to reapply for admission under section 212(a)(9)(A) 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)(ii)(I) of the Act, 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 upon the applicant to establish he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.