



U.S. Citizenship
and Immigration
Services

H4

[REDACTED]

Date: OCT 24 2012

Office: VIENNA, AUSTRIA

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

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.

Thank you,

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) was denied by the Field Office Director, Vienna, Austria and is now before the Administrative Appeals Office (AAO) on appeal. The Form I-212 was denied based on the denial of the Form I-601. The AAO has now found the applicant eligible for a waiver of inadmissibility under sections 212(a)(9)(B) and 212(i) of the Act, it will withdraw the Field Office Director's decision on the Form I-212 and render a new decision. The appeal will be sustained.

The applicant is a native and citizen of Montenegro who was found to be inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). 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 U.S. citizen spouse and other family members in the United States.

The Field Office Director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. He was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The applicant is also inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) because he failed to depart immediately after exhausting all his appeals for a removal order entered on August 16, 2000. The Field Office Director found that the applicant failed to overcome the grounds of inadmissibility and thus denied the Form I-212. *Decision of the Field Office Director*, dated November 30, 2010.

On appeal, counsel asserts that the Field Office Director failed to fully evaluate the applicant's request for permission to reapply after an order of deportation.

Section 212(a)(9)(A) of the Act states in pertinent 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

(II) departed the United States while an order of removal was outstanding, and 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 aliens 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 Attorney General [now Secretary, Homeland Security] has consented to the alien's reapplying for admission.

On December 6, 2005, the applicant was removed to Montenegro, and as such, he is inadmissible under section 212(a)(9)(A) of the Act and must request permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. In a separate decision, the AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

ORDER: The appeal is sustained.