

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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: **SEP 17 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. The applicant, through counsel, motioned the Field Office Director to reconsider the denial, and the Field Office Director denied the applicant's motion on August 27, 2010. The application for permission to reapply for admission into the United States 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 and citizen of Albania who was found to be inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), 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 wife 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 States or attempt to be admitted from foreign contiguous

¹ The AAO notes that in her decision, the Field Office Director incorrectly indicates that the applicant is inadmissible under section 212(a)(i)(A)(i)(I) of the Act. The AAO also notes that the Act does not contain such a provision. Rather, the record reflects that the applicant is inadmissible under section 212(a)(i)(A)(ii)(I) of the Act.

territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant was apprehended by U.S. immigration officials on February 26, 2001, and placed in removal proceedings under section 240 of the Act. On September 25, 2002, the Immigration Judge issued an order, denying the applicant's applications for asylum and for withholding of removal, as well as his requests for relief under the Convention Against Torture and for voluntary departure. On April 14, 2004, the Board of Immigration Appeals (BIA) dismissed the applicant's appeal of the Immigration Judge's order.² On October 20, 2005, the U.S. Court of Appeals for the Seventh Circuit denied the applicant's appeal of the BIA's decision. The applicant remained in the United States until October 23, 2006, when he was removed to Albania. 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 December 29, 2009. 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 section 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.

² The AAO notes that the Field Office Director's decision erroneously indicates that the BIA issued its decision on October 25, 2002. However, the AAO finds the Field Office Director's incorrect reference to the date of issuance to be harmless error.