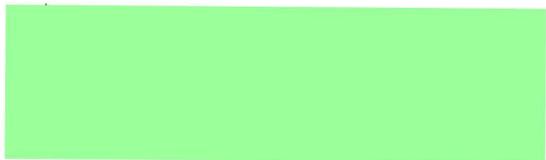




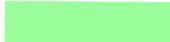
U.S. Citizenship
and Immigration
Services

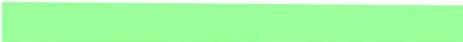
(b)(6)



Date: APR 15 2013

Office: BALTIMORE

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:

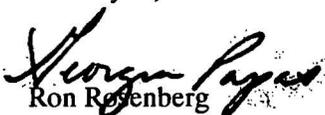
SELF-REPRESENTED¹

INSTRUCTIONS:

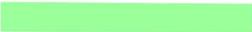
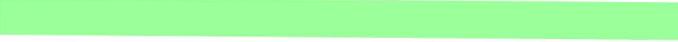
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that 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,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

¹ The attorney of record in the present matter,  was disbarred from practicing before immigration courts and the Department of Homeland Security, the agency of U.S. Citizenship and Immigration Services and the Administrative Appeals Office. See Executive Office for Immigration Review, List of Currently Disciplined Practitioners at <http://www.justice.gov/> 

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

The record indicates that the applicant is a native and citizen of Benin who entered the United States on September 16, 1989, with an F-1 non-immigrant student visa to attend [REDACTED] in Washington, DC. The record further indicates that the applicant stopped attending [REDACTED] around September 1990. An immigration judge ordered her removed on November 12, 2003, and after her appeal and numerous motions were dismissed by the Board of Immigration Appeals (BIA), on November 27, 2007, the applicant was removed from the United States. On April 23, 2008, the applicant filed Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), in order to reside in the United States with her U.S. citizen spouse.

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 field office director determined that the applicant failed to establish that a favorable exercise of the Secretary's discretion is warranted and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated September 16, 2010.

The record indicates that on December 9, 2011, the approval of the Form I-130, Petition for Alien Relative (Form I-130) filed by the applicant's spouse on her behalf was revoked. In the absence of an underlying approved Form I-130, permission to reapply for admission to the United States after removal is not available. The appeal of the denial of the Form I-212 must therefore be dismissed.

The record also indicates that the petitioner, the applicant's spouse, has appealed the decision to revoke the Form I-130 to the BIA and that a decision by the BIA is still pending. Should the BIA overturn the revocation of the Form I-130 and reaffirm its approval, the applicant will be required to apply for an immigrant visa at a U.S. consulate abroad.

Moreover, the record indicates that the applicant remained in the United States without authorization after her student visa expired in 1990. The applicant appears to be inadmissible to the United States under 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 a period of more than one year between April 1, 1997² and her removal on November 27, 2007.

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 appears to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act and, if she is the beneficiary of a Form I-130 petition, would require approval of a Form I-601, Application for Waiver of Grounds of Inadmissibility, 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 she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has not established that she is eligible for this benefit. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

² No period of unlawful presence prior to the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, is counted when determining inadmissibility under section 212(a)(9)(B) of the Act.