



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **AUG 28 2013**

Office: BALTIMORE

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Field Office Director, Baltimore, Maryland. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion 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 for the duration of her status 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.

The field office director determined that 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 AAO, in its previous decision, noted that 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, there is no basis for an application for admission, and permission to reapply for admission to the United States after removal is not available. The appeal of the denial of the Form I-212 was consequently dismissed. *Decision of the AAO*, dated April 15, 2013.

The AAO also noted that the record 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.

The AAO further noted that the record indicates that the applicant remained in the United States without authorization after her studies ended in 1990 and was found to have violated the terms of her nonimmigrant status by an immigration judge, who denied her asylum application and ordered her removed on November 12, 2003.<sup>1</sup> The applicant's appeal of the denial of her asylum application was dismissed by the BIA on May 24, 2005; and 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 after her she was ordered

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<sup>1</sup> The applicant did not begin to accrue unlawful presence on the date her nonimmigrant status violation occurred, but rather on the date she was ordered removed by an immigration judge. *See Memorandum from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. And Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act (May 6, 2009).*

removed by the immigration judge or after the BIA dismissed her asylum appeal.<sup>2</sup> *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 a waiver for this ground of inadmissibility, the AAO determined that no purpose would be served in granting the applicant's Form I-212.

The applicant submitted a Notice of Appeal or Motion (Form I-290B), filing a motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant has failed to assert that the decision of the AAO was based on an incorrect application of law or Service policy, based on the evidence of record at the time of the decision. Further, the motion does not specify any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or Service policy. As such, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion is dismissed.

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<sup>2</sup> The record does not establish whether the applicant worked without employment authorization at any time her asylum application was pending, which would cause her to accrue unlawful presence despite having a pending asylum application. See section 212(a)(9)(B)(iii)(II) of the Act. However, the applicant remained in the United States in unlawful status from May 24, 2005, when the BIA dismissed her appeal, until she was removed in November 2007.