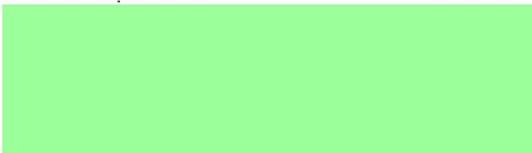




U.S. Citizenship
and Immigration
Services

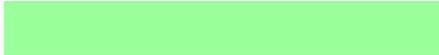
(b)(6)



DATE: **FEB 06 2013**

OFFICE: LIMA, PERU

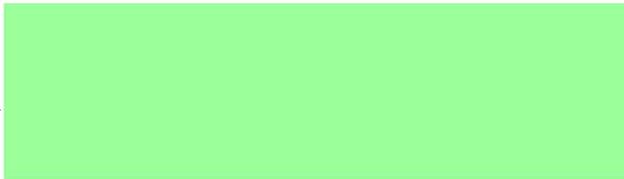
FILE: 

IN RE: 

APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Lima, Peru denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil who was found to be inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II). The applicant was ordered removed from the United States on May 11, 2005 and 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 in the United States with his lawful permanent resident spouse and U.S. citizen child.

The field office director determined that because the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied, his Form I-212 should also be denied because granting the application would serve no purpose. See *Decision of the Field Office Director*, dated June 6, 2012.

On appeal, counsel disputes the removal order and asserts that the decision constitutes an abuse of discretion.¹ See *Form I-290B, Notice of Appeal or Motion*, received June 28, 2012.

On the Form I-212, in Part 2, counsel indicates that the applicant is subject to section 212(a)(9)(C)(i)(I) of the Act. The AAO notes that section 212(a)(9)(C) of the Act does not apply in the applicant's case, as he is not an alien who had been ordered removed and who reentered the United States without being admitted. In fact, there is no evidence that the applicant has re-entered the United States after voluntarily leaving on December 26, 2008. The applicant is inadmissible, however, under section 212(a)(9)(A)(ii) of the Act, as an applicant who departed the United States while an order of removal was outstanding.

The record contains but is not limited to: Forms I-290B; Form I-212; Form I-601; Form I-130, Petition for Alien Relative; statements by the applicant, his wife and son; identification documents; and marriage and birth certificates. The entire record was reviewed and considered in rendering this decision on the appeal.

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

¹ The AAO has, in a separate decision, dismissed the applicant's appeal of the denial of Form I-601.

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 Attorney General has consented to the alien's reapplying for admission.

The record reflects that the applicant entered the United States on or about November 5, 2004 without inspection. The applicant was found to be inadmissible under section 212(a)(6)(A)(i) of the Act, as being present in the United States without having been admitted or paroled. The applicant was ordered removed by an immigration judge *in absentia* on May 11, 2005.

The AAO notes that the director denied the applicant's Form I-212 on the same date she denied the applicant's Form I-601 application. The AAO has dismissed the appeal of the Form I-601 application. *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 remains inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) 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.