(b)(6)

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Date: FEB 19 2013 Office: PANAMA CITY 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-REPRESENTED

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,

Ron Rosenberg
Acting 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, Panama City, Panama, 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, Application for Waiver of Grounds of Inadmissibility (Form I-601). As the AAO has now found the applicant eligible for a waiver of inadmissibility under sections 212(a)(9)(B) 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 Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II). 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.

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. 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 was ordered removed and deported on July 28, 2005. The Field Office Director found that the applicant failed to overcome the grounds of inadmissibility and thus denied the Form I-212 as a matter of discretion, as its approval would serve no purpose. *Decision of the Field Office Director,* dated March 8, 2012.

On appeal, the qualifying spouse provides additional documentation to demonstrate that she would suffer extreme hardship upon separation or relocation to Colombia, and that the applicant has good moral character.

The record contains an Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212); a Form I-601[1]; two Notices of Appeal or Motion (Forms I-290B); relationship and identification documents for the applicant and qualifying spouse; letters from the applicant, qualifying spouse, family members, friends, employers and their church; medical documentation regarding the applicant, qualifying spouse and her mother, including medical information about their health issues; financial documentation for the qualifying spouse, her mother, their business and the applicant; copies of the applicant's high-school diploma, professional certificates and licenses; country-conditions materials about Colombia; documentation regarding the cost of travel to Colombia; an approved Petition for Alien Relative (Form I-130); an Application for Asylum and Withholding of Removal (Form I-589) submitted by the applicant's mother on behalf of his family with supporting evidence; a denied Application to Register Permanent Residence or Adjust Status (Form I-485) and an Application for Immigrant Visa and Alien Registration (DS-230). The entire record was reviewed and considered in rendering a decision on the appeal.

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

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[1] The applicant also appealed the denial of his Form I-601 application. That appeal was decided in a separate decision.

(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 June 24, 2004, an immigration judge denied the applicant and his family's applications for asylum and withholding of removal and ordered them removed from the United States. On July 28, 2005, the Board of Immigration of Appeals affirmed the judge's decision. The applicant departed the United States under his order of removal on November 25, 2007, 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.