



**U.S. Citizenship
and Immigration
Services**

(b)(6)

Date: **FEB 25 2013**

Office: ST. ALBANS

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:

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

R. Rosenberg
Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The application for permission to reapply for admission after removal (Form I-212) was denied by the Field Office Director, St. Albans, Vermont, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of India and citizen of Canada who attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant was expeditiously removed in March 2008. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). She now 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 her siblings.

The Field Office Director determined that the applicant was also inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The Field Office Director concluded that as a qualifying relative did not exist for purposes of a waiver of inadmissibility for fraud or misrepresentation, the applicant was statutorily ineligible for a waiver and thus, no purpose would be served in approving the applicant's Form I-212. The Form I-212 was denied accordingly. *See Field Office Director's Decision*, dated December 21, 2011.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 years of the date of such removal (or within 20 years in the case of a second

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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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

On appeal, counsel maintains that the Field Office Director erred in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act and thus, the applicant is eligible for an I-212 approval at this time. Counsel asserts that although the applicant misrepresented her intentions when attempting to procure entry to the United States, she timely recanted during the first opportunity she had in secondary inspection. *See Form I-290B*, dated January 16, 2012 and *Brief in Support of Appeal*, dated February 14, 2012.

The applicant admits that about 10 to 15 minutes after being placed in secondary inspection, [REDACTED] called her to the counter and told her he could not let her to go Cleveland because she was living in the United States with her husband and daughter. She was told to sit down and come back after 30-45 minutes. It was at that point, the applicant contends, that she told the officer everything about her family's residence in the United States. *See Affidavit of Pushpaben Patel*, dated February 3, 2012.

As the applicant further details,

....My husband and I had invested most of our life's savings (over \$125,000) in a motel business with a family friend in Dublin, Ohio. I had recently been laid off from my job in Canada and we were trying to do the best we could in the severe financial situation. The opportunity to invest and help run the business was our chance at surviving in the bad economy. My husband and I moved to Columbus, Ohio in early 2006 where helped to take care of the business....

I am truly sorry for my previous immigration violation. I promise you that nothing of the sort will ever happen again....

Letter from [REDACTED] dated May 25, 2011.

The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19

I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Pursuant to the record, the applicant attempted entry to the United States by stating that she was intending to visit her relative for a one week stay. See *Record of Sworn Statement in Proceedings*, dated March 16, 2008. It was only after being in secondary inspection for a period of time, and after questioning by the officer regarding her intentions to reside in the United States, that the applicant admitted that she intended to resume unauthorized residence in the United States. The record does not support counsel's assertion that the applicant admitted her true intentions at first opportunity. Thus, it has been established that the applicant attempted to procure entry by willfully misrepresentation when she attempted entry to the United States in 2008. The AAO thus concurs with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) 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. The applicant is clearly inadmissible under section 212(a)(6)(C)(i) of the Act. The record establishes that the applicant does not have a United States citizen or lawful permanent resident spouse or parent. Thus, she is statutorily ineligible for a waiver of inadmissibility pursuant to section 212(i) of the Act. Consequently, as properly noted by the Field Office Director, no purpose would be served in granting the applicant's Form I-212. Accordingly, the appeal of the field office director's denial of the Form I-212 is dismissed as a matter of discretion.

ORDER: The appeal is dismissed.